1794

OBSERVATIONS

ON THE

VINDICATION

OF THE

Dublin WHIG CLUB.

TO WHICH ARE SUBJOINED,

THE SPEECH OF THE LORD CHANGELLOR,

AS IT APPEARED IN THE NEWSPAPERS,

THE VINDICATION OF THE WHIG CLUB,

AND

A LETTER SIGNED TRUTH,

WHICH APPEARED IN FAULKNER'S JOURNAL.

DUBLIN:

P. BYRNE, 108, GRAFTON-STREET.

1790.

BRITISH MUSEUM

Advertiſement to the Reader.

THE Writer of the following Obſervations has thought it right to ſubjoin to them the Report of the Lord Chancellor's Speech, *as printed in the Iriſh Newſpapers—not becauſe it is by any means the real ſpeech of the Chancellor, for that, probably, could not be procured; but becauſe it is made the ground of the attack upon his character. He has alſo annexed* the Vindication of the Whig Club, *at full length, that the Reader may ſatisfy himſelf, that in the following Obſervations they are not miſtated; and he finally adds a Paper, which appeared recently in Faulkner's Journal, under the ſignature of* Truth, *becauſe that paper contains many pointed remarks upon the ſtatute of the 33d of George II. and contains thoſe clauſes of that act and of the New Rules which relate to the queſtion in diſpute between the two great bodies of the Corporation of Dublin.*

OBSERVATIONS

ON THE

VINDICATION

OF THE

WHIG CLUB.

THE late publication, iſſued in the names of certain Lords and Commoners, ſtiling themſelves, "*A* "*Committee of the Whig Club*," ought to awaken the feelings of every ſober and thinking man in this kingdom.

A native of Ireland has been recently advanced, with the general good will of his countrymen, to the FIRST judicial ſtation amongſt them. He has heretofore been conſidered as a man of great profeſſional knowledge and unimpeached integrity; and now, for the firſt time in his life, he is publicly arraigned by a Committee of the Whig Club, many of them members of the Aſſembly in which he preſides, and ſome of them profeſſing to be his private friends—as a monſter of corruption and iniquity:—

He is accuſed of *having invaded the law, and the rights of the metropolis*, and of having, contrary to his oath, *adviſed the Lord Lieutenant and Council to commit an arbitrary and illegal act*:—And he is deſcribed to be the *Jeffryes of Ireland—a dangerous inſtrument in the hand of oppreſſion—an arbitrary man, hurried away by a criminal diſregard for his fellow citizens, and armed with little points of his profeſſion, to pervert the ſcience of the law, and to aſſail the liberties of the People.*

Such is the charge againſt the LORD CHANCELLOR; and if it be well founded, the Committee of the Whig Club will not, it is preſumed, reſt ſatisfied with propounding it in a newſpaper.—They will not leave it on the public mind, as a malicious and untenable libel. Profeſſing to have aſſociated to preſerve the laws and the conſtitution, they will not ſuffer a character, whom they have arraigned as the enemy of both, to remain in the firſt ſeat of judicature, but will conſider themſelves committed to the nation, to impeach the ſaid Lord Chancellor, "For having invaded the laws and the rights of the "metropolis, and having contrary to his oath, ad-"viſed the Lord Lieutenant and Privy Council to "commit an arbitrary and illegal act; and as a man, "who is a dangerous inſtrument in the hands of "oppreſſion—an arbitrary man, hurried away by a "criminal diſregard for his fellow citizens, and armed "with little points of his profeſſion, to pervert the "ſcience of the law and to aſſail the liberties of the "people."

From this charge the Committee of the Whig Club cannot retreat: They have ſet it forth to the public: They have ſubſcribed their names to it, againſt the Lord Chancellor of Ireland; and profeſſing it to be a great Conſtitutional Body, aſſociated for the preſervation of the laws and conſtitution, they are called upon to extirpate him, if poſſible,

from

from the face of the earth, as a monſter of iniquity and corruption.

In the mean time the nation will pauſe, and examine the grounds upon which theſe heinous and aggravated charges are advanced.

The judge, whom the Committee of the Whig Club have claſſed with the moſt hated character, which ever diſgraced the ſeat of juſtice, has heretofore maintained a fair fame in the country which gave him birth: During the ſhort period in which he has preſided in the Court of Chancery, his judicial deciſions have not been complained of, as founded in ignorance and corruption: He has during that period attended to the duties of his judicial function with unremitting aſſiduity; and has effected what was heretofore conſidered as impracticable in this country,—he has uniformly, ſince his appointment, diſpatched the buſineſs of his court as quick as the parties have been able to prepare it for deciſion. Is there a ſuitor in the Court of Chancery who can ſay, ſince LORD FITZGIBBON was appointed to preſide there that his cauſe was ready for hearing, and that the Chancellor was not ready to hear it? Is there a ſuitor in the Court of Chancery, whoſe cauſe has been heard, who complains than it has been decided ignorantly or corruptly?—The people of Ireland have heretofore rated the Chancellor as an honeſt man, and a ſound lawyer: The Corporation of the City of Dublin, whoſe cauſe the Whig Club have taken cognizance, at their Quarter Aſſembly, elected him a member of their body,—*as the tribute of a grateful people to a truly learned, enlightened, firm, and juſt Judge.* Several other corporations have born the moſt honourable teſtimony to his character and abilities; and moſt of the counties have joined in public approbation of his advancement—What then are the grounds upon which he is ſo unaccountably maligned and arraigned by a Committee of the

Whig

Whig Club in the public Prints,—" as a ſuſpicious and arbitrary character,—as a dangerous inſtrument in the hands of oppreſſion,—as treating his fellow-citizens with criminal diſregard,—aſſailing their liberties, by perverting the law,—as the counterpart of the moſt odious character that ever diſgraced the bench,—as the Jeffryes of Ireland?"——The charge is made becauſe he is ſaid to entertain an opinion upon the conſtruction of an act of parliament diſagreeable to the Committee of the Whig Club, an opinion which, his oath, as a Privy Counſellor, and as Chancellor, binds him to give according to the conviction of his judgment. Now it happens that the queſtion upon which this opinion has been given is not new. It has occurred in Weſtminſter-Hall more than once, and in every caſe wherein it has occurred, the deciſion of the judges of England has been uniformly conſiſtent with the opinion, which it is ſaid, has been given by the Chancellor.

This opinion is ſuppoſed to be of the following purport;

1ſt. That by the common law, a right of election in a ſelect body of a corporation, and a power of approbation in another, are diſtinct and ſeparate rights, perfectly *conſiſtent* with each other.

2dly, That the election is *conſummate*, before the approbation; and therefore, that the body, in whom the power of approbation is veſted, cannot withold it without juſt and reaſonable cauſe for ſo doing.

3dly, That the power of diſapprobation cannot be transformed into a right of election by any principle of the common law.

Theſe principles are clear and plain: and the deduction made from them by the Chancellor on the preſent occaſion is ſaid to be—" That the Lord " Lieutenant and Council would not be juſtified " in taking upon them to determine that the differ- " ent proviſoes in the ſtatute, under which the

" Commons

" Commons of the city of Dublin claim to transform " their power of diſapprobation into an excluſive " right of election, can operate to ſubvert the " known and ſettled principles of the common law; " —That if the ſtatute will bear this conſtruction, " which the Chancellor has declared he thinks it " will not, the Court of King's Bench is the pro- " per judicature to which the parties ought to reſort " for a deciſion, to eſtabliſh their claims—upon " the validity of which, however, the Chancellor " has ſtated, that he has not formed a final opinion, " and likewiſe, that he will not, till the ſubject " comes judicially before him in the Houſe of " Lords."

With reſpect to theſe leading principles, on which the Chancellor ſeems to have formed his opinion, if he has erred, he has erred with authority which has not heretofore been queſtioned in Weſtminſter-Hall:—He has erred with Lord Holt and his brethren, the judges of the Court of King's Bench, in the reign of Queen Anne; and with Lord Mansfield and his brethren, judges of the ſame Court in the preſent reign.

By the charter of the corporation of Norwich, the Aldermen are elected by the different Wards; and the court of Aldermen have a right to *refuſe* the perſon elected. An Alderman who had been *elected*, but refuſed by the Aldermen, applied for a *Mandamus* to admit him; to which the Mayor and Aldermen made a contradictory and inconſiſtent return. In that caſe it was argued by counſel—" That the election by the Ward is no election, becauſe it is not *conſummate*, till it is approved by the Mayor and Aldermen." Lord Holt's judgment upon this argument is in theſe words—" The chuſing by the Ward " is an *election*; for they have ſeveral perſons to " chuſe out of; and the Mayor and Aldermen have " *no choice*, but only approbation—for they cannot chuſe

" chuſe. The election and approbation are diſtinct " acts, to be done by ſeveral parties; and if the " election is *conſummate before* the approbation, then " the return is contradictory, in returning an excuſe, " why the Alderman was not approved, and then " returning, that he never was elected." Mr. Juſtice Powell's judgment on the ſame argument concurs:— " The election, ſays he, and approbation are two " different things; and the election is *conſummate* " without the *approbation*;" and he compares it to the caſe of a preſentation before inſtitution:—Mr. Juſtice Powis and Mr. Juſtice Goold concurred.— This was a caſe of a power of refuſal or rejection after election given to a ſelect body of a corporation, by charter. It is reported by Lord Raymond, fol. 1245, and the determination was made in the 5th year of Queen Anne.

The ſame principle governed the deciſion of Lord Mansfield and his brethren, in the caſe of the corporation of Durham; where, under a bye law, a previous approbation by the Lord-Mayor and one or more Aldermen, was made neceſſary, to qualify any perſon to be elected into the corporation. Lord Mansfield and his brethren determined " that the " power of approbation was a reaſonable regulation, " to prevent the election of perſons not qualified— " that it did not *transfer* the right of election, for " that if it was withheld arbitrarily, the court of " King's Bench would compel the Mayor and Al- " dermen to approve." This caſe was determined in the 30th year of Geo. II. and is reported in 1ſt Burrow, fol. 127.

By the charters of the city of London, the court of Aldermen have a power to reject an Alderman elected by the Ward; and as yet it does not appear, that under this power of rejection, the Aldermen of London claim the excluſive right of election.

Poſſibly the Committee of the Whig Club may give the appellation of *quibbles*, to the diſtinctions taken

taken by Lord Holt and Lord Mansfield.—The Committee of the Whig Club may call them *little points of profeſſion*, brought forth to *pervert the ſcience of the law, and to aſſail the liberties of the people.*—But they are quibbles, and little points of profeſſion, which a man who knows the law, and whoſe office it is to expound it, will, on account of their being the judicial deciſions of the higheſt authority, regard as main pillars of the conſtitution.

No man who knows the conſtitution of the corporation of Dublin can ſay, that the right of electing their chief magiſtrate is not in the Lord Mayor and Aldermen;—no man can aver, that the Commons of the city of Dublin have any other power given to them, ſave a power to approve or diſapprove the perſon who has been elected;—no man, who knows the common law, can maintain that the principles ſtated by the Chancellor are not clear and ſettled;—that the election by the Aldermen and the approbation by the Commons are diſtinct acts;—that the election is conſummate before the approbation;—and that the power of approbation, by the ſettled rules of the common law, does not give any right of election. Theſe diſtinctions are not Lord Fitzgibbon's alone: They are Lord Holt's—they are Lord Mansfield's—they are diſtinctions known to every man who is a lawyer; and no man who is acquainted with the law, and loves the conſtitution, will ſay, that the Chancellor would be juſtified, ſitting in council, to adviſe his Majeſty's Repreſentative to take upon himſelf to determine at the Council Board, that the proviſoes in the ſtatute of 33 of Geo. II. many of them tacitly implied in the enacting part of the clauſe which gives the power of approbation, or that the clauſe which directs the approbation of the Commons to be given by ballot, do of neceſſity ſubvert and repeal the fundamental rules of the common law, as recognized by the moſt enlightened judges, that ever ſat in Weſtminſter-Hall.—What then

has

has the Chancellor done?—He has adviſed his Majeſty's Repreſentative to approve of Alderman James, who was elected by that part of the corporate body, in whom the right of election is veſted; and againſt whom no cauſe of objection was alledged by the Commons; and to leave it to thoſe who arrogated to themſelves an excluſive right of election, as derived to them under a mere power of diſapprobation, to eſtabliſh that right, as they could, before the proper judicature.——A right of election as derived under a power of diſapprobation, whether given by charter, ſtatute, or bye-law, is unknown to the common law; no printed caſe occurs, in which ſuch a right has been allowed. In every caſe in which the queſtion has ariſen in a court of law, it has been determined, that a power of approbation or diſapprobation gives no right of election. The Commons of the city of Dublin at the Council-board avowedly and explicitly claimed the excluſive right of election, as derived to them under their power of diſapprobation; and the Chancellor and the two Chief Judges adviſed his Majeſty's Repreſentative to leave them to eſtabliſh this new and unheard of claim in the proper court of law, in which advice more than twenty of the Council concurred.

When the approbation of Alderman James was announced to the parties, the firſt act of the commons was to aſſemble, and expound the law for themſelves. They reſolved—"That they had a clear excluſive right of election.—"That the Lord Lieutenant and Council had aſſumed and exerciſed a power to diſpenſe with the law.—"That they would withhold the Manſion-Houſe and City Regalia from Alderman James.—"That the City Treaſurer ſhould not pay him the ſalary annexed to the office of Lord Mayor. And finally—"That they would addreſs his Majeſty, to remove for ever from his councils, every man, who had preſumed to differ in opinion with them in an expoſition of an Act of Parliament,

under

under which they claimed the exclusive right of electing a chief magistrate for the city of Dublin." These were the proceedings of the majority of the Commons in their corporate capacity. Lest, however, additional energy might be wanting to this constitutional course of measures, their leaders individually invited their fellow citizens to take up arms, in redress of what they were pleased to style—an invasion of ther rights; and to mark the cause in which they should arm, the use of *National Cockades* was recommended. This invitation was accepted, and in a very few days the ensign of the French revolution was displayed in every street of the metropolis.

It occurs to a man of common understanding, that the Whig Club, professing to have associated for the preservation of the laws and constitution, would have witnessed these proceedings of the citizens of Dublin with the deepest concern;—that they would have told them:—"By the laws and constitution, which "we are associated to preserve, no man is allowed "to be a judge in his own cause: By the laws "and constitution, which we are associated to "preserve, no man is allowed to take up arms "to assert a claim of right: We exhort you "therefore, not to make this question of *right* "a question of *force*; nor to set an example of "disaffection to your countrymen, by introducing the ensigns of revolution and rebellion into "the metropolis. If your rights have been invaded, "the courts of law are open to you: You shall "have full redress there. And if in the event of an "appeal to the laws of your country, it shall turn "out, that your rights have been invaded, we will "then co-operate with you in punishing those, of "whom you may have just cause of complaint." This would occur to men of common understanding, as the language of men—*associated to preserve the laws and the constitution.* But this style of address would not have answered the ends of the Irish Whig Insti-

tution. Different indeed, are the ſentiments and exhortations of this aſſembly, as correſponding, for ſo we muſt believe, to their deſigns and objects. To men, who had aſſumed the deciſion of their own claims with arms in their hands, and had raiſed the enſign of revolution in the metropolis, the addreſs to the Earl of Charlemont and the Earl of Moira, echoed by the Whig Club, is to the following purport. "We witneſs with the deepeſt concern, what "has paſſed at the election of your Chief Magiſtrate: "The laws have been violated, the rights of the "people have been invaded, and we will co-operate "with our fellow citizens, who have moſt conſtitutionally and temperately decided upon their own "claims, and taken up arms to enforce their deciſion, "in all *legal* and *conſtitutional* meaſures to vindicate "the laws and the rights of the metropolis!" This is the language of Iriſh peers and commoners, profeſſing to have aſſociated themſelves for the preſervation of the laws and conſtitution, addreſſed to men aſſembled in military array, under the ſtandard of the French democracy. The Whig Club on the motion of the Earl of Charlemont and the Earl of Moira, in order to induce their fellow citizens aſſembled in military array, under the enſign of the French democracy, to lay down their arms, avowedly taken up for the ſole purpoſe of aſſerting an alledged claim of right, tell them by Mr. Grattan, the Pro-Secretary of the Whig Club;—"Your rights have been in-"vaded, the laws have been violated—and by "whom? by the principal Judges of the land, whoſe "duty it is to diſpenſe juſtice according to law." This is the conciliating addreſs of the Earl of Charlemont and the Earl of Moira, echoed by the Whig Club, to the diſcontented armed citizens of the metropolis.—This is the flattering picture they hold of the principal judicial men in the nation to the ſame armed citizens. This is the peace-making exhortation

tion to the diſcontented armed citizens of the metropolis, at the ſuppoſed eve of a foreign war.

On the firſt day the Houſe of Peers met, after this charge was made in the public prints, in the names of the Earl of Charlemont and the Earl of Moira, the Chancellor called upon them in his place, as a Peer of the realm, to declare whether their names had been affixed to it with their authority; and if they avowed the charge, to ariſe in their places, as Peers of the realm, and to ſupport it;—to the end, that if they could convince him, that an act in which he had concurred, and which they had publicly arraigned, as an invaſion of the laws and the rights of the metropolis, was an arbitrary and illegal act, that he might have an opportunity publicly to retract his error;—but if they could not ſupport the charge, that he might as publicly refute it. The two noble Earls avowed the charge; but declined to ſay one word in ſupport of it: and the Chancellor did then, in terms of perſonal reſpect for the men, reprobate the charge with ſeverity, and explain the nature of the proceeding, which the two noble Earls had miſrepreſented as an invaſion of the laws and of the rights of the metropolis;—and having explained it, he again called upon them to diſcuſs the queſtion with him *face to face*, ſtating to them, that he was open to conviction, and would retract his opinion, if they could convince him that it was ill founded. But the two noble Lords declined the challenge. Their Lordſhips will recollect, the Chancellor told them repeatedly, "That if the charge "had appeared ſimply, as the reſolution of the "Whig Club, he would have paſſed it by unno-"ticed; that he called upon them, becauſe they "had given the charge the authority of their names, "to ſupport it as Peers of the realm, in the only "place where he could meet them *face to face*." A charge which he conceived to reflect *diſhonour* upon him. Honour is the characteriſtic of the Iriſh nation;

tion;—and the Iriſh nation will judge, whether it is not incumbent on every man, who feels that a public charge has been made which reflects diſhonour upon his character, to call upon his deſamer to meet him *face to face*, and ſupport the charge. This was the conduct of the Chancellor—what is the behaviour of his accuſers? In the only place where he could meet them, they were ſilent and fell back from the conteſt;—and after an interval of ten days, a malignant *libel* is put forth in the public prints, and for its better circulation, is re-publiſhed in ſingle ſheets, as the joint production of his Grace the Duke of Leinſter, the Earl of Moira, the Earl of Charlemont, the Earl of Arran, Mr. Ponſonby, Mr. Grattan, Mr. Curran, Sir Edward Newenham, Mr. Egan, and Mr. Hamilton Rowan. Theſe noble and conſtitutional accuſers have put their names at the front of the publication, determined as we muſt ſuppoſe, to make good their charge in the face of the nation by a public impeachment:—They profeſs that *they have no perſonal animoſity*; they know, that the ſituation of the perſon they attack, ties his hands behind him; they know, that if they cannot make good their charges, or if they refuſe to bring them to trial, they will ſtand ſelf-convicted and ſelf-condemned, as public libellers and defamers; that if the accuſations they have alledged be true, they are bound to tear the Chancellor from the ſeat of juſtice, and that if they are unfounded, unſupportable and falſe, they themſelves will merit the ſevereſt puniſhment.

The pretence offered to the public for this libel, for until it be proved by impeachment and conviction ſo it muſt be termed, is a newſpaper report of a ſpeech of the Chancellor, calling upon the two noble Earls to ſupport the charge which they had publicly made againſt him. Any man accuſtomed to hear the Chancellor ſpeak in public, who reads that

newſpaper

newſpaper report, muſt ſee that neither the matter nor the words of the ſpeech, as there reported, are his. The noble Earls who were on the Committee appointed to prepare the libel, heard the ſpeech delivered, and they muſt know that the newſpaper very much miſtates it. The Committee indeed affect to ſay, that it is not the ſpeech delivered by the Chancellor, and then proceed to animadvert upon it, as having come from him, and to load him perſonally with foul and venemous reproach and calumny.

The Committee of the Whig Club indeed, by way of apology for their perſonal calumny and reproach, affect to believe "That various and extra-"ordinary charges had been advanced againſt the "Members of their Society; that they had been "compared to porter clubs, and ſuch like low and "riotous meetings, and that they were charged as "being perſons of the groſſeſt ignorance." Nothing of the ſort appears even in the publication which is made the pretence for libelling the Chancellor. The two noble Earls muſt know, that he never compared the Whig Club to porter clubs—that he never charged the Whig Club as perſons of the groſſeſt ignorance. He ſtated expreſly, "That if "the Reſolution, which he alluded to, had appear-"ed ſimply as the Reſolution of the Whig Club, he "would have paſſed it by wholly unnoticed." He called upon the two noble Earls individually, as Peers of the realm, to avow the Reſolution and defend it; and when they had avowed it, he ſtated, "That the beſt apology which could be made for "the two noble Earls, the authors of it, was radi-"cal ignorance of the law and conſtitution;" and in that charge the two noble Earls, ſitting in their places, as Peers of the realm, publicly acquieſced.

The Committee of the Whig Club proceed to inform the Common Council and the Citizens of

Dublin,

Dublin, " That the Chancellor has aggravated their " preſent ſituation, by overwhelming with a tor- " rent of abuſe, men already ſtruggling under great " wrong." Not one word of abuſe of the Citizens of Dublin, or of the Common Council, appears in the publication, which is the affected pretext of this charge on the Chancellor. The noble Earls muſt know, that nothing of the ſort fell from him in the Houſe of Lords, and if the Chancellor did load the Citizens of Dublin with a torrent of abuſe in that aſſembly, why did the noble Earls ſuffer it to paſs unnoticed *there?*

The Committee of the Whig Club tell the citizens of Dublin—" that they are already ſtruggling under great wrong." If the Common Council have a clear excluſive right of electing their Chief Magiſtrate, by the act which gives them a power of *approbation only*, after he ſhall be elected by another ſelect body of the corporation, there may be ſome ground for this obſervation. But upon this point of law, there is a difference of opinion between the Committee of the Whig Club and the Chancellor. The Chancellor declares it to be his opinion that they have not a clear excluſive right of election, and that the Lord Lieutenant, ſitting in council, would not be warranted to take upon him to adjudge, that they have ſuch a right, and in this opinion two of the Chief Judges concur with him.

The Committee of the Whig Club, affecting to believe that the publication taken up by them is not the Speech of the Chancellor, proceed to charge him perſonally, with having upon former occaſions offered groſs language to the people. The Chancellor did in the year 1785, declare in the Houſe of Commons, " That if Ireland ſought to quarrel with Great-Britain, and to ſeparate from her, ſhe was a *beſotted* nation. Is there an honeſt man in the kingdom who does not agree in opinion with him?

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The Committee of the Whig Club proceed to inſinuate a charge—*that the people had the aſſertion of the Chancellor againſt Mr. Grattan's Declaration of Right.* This inſinuation is not founded in truth. The Chancellor never did make an aſſertion againſt that Declaration of Right. On the the contrary, he did explicitly declare his opinion—" That the claim of the Britiſh parliament to make laws to bind this country was an uſurpation on the rights of a free people; but he did object to ſuch a declaration being made at that time, becauſe he did not conſider it to be an act of prudence, by a Reſolution of the Houſe of Commons, to declare—that Engliſh acts of Parliament were not in force in Ireland, at a time when a great proportion of the landed property of Ireland was derived alone from that authority; and the light in which this power over the titles of Iriſh property was conſidered in Great-Britain may be viewed from the conduct of the Britiſh cabinet, during the viceroyſhip of the Duke of Portland; when they poſtponed returning the bill for confirming Iriſh titles, till this nation had expreſſed its ſatisfaction in the conceſſions of Great-Britain. It was before that act was obtained or brought forward, that the Chancellor did not think it an act of prudence to commit the people of Ireland *at once* with the Britiſh nation: and in this he was ſupported by ſome of the principal Whigs of this day: and the Iriſh nation will judge by ſubſequent events, and the preſent ſtate of this country, whether this opinion was corrupt and criminal.

The Chancellor did alſo, when ſome of the Whigs of this day defended their country againſt the famous Propoſitions, recommend them to ſuffer a bill to be introduced into the Houſe of Commons, which would enable the people of Ireland to ſee and judge of the treaty which was offered to them, before they were made finally to reject it, in which advice he was

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alſo ſupported by ſome of the Whigs of this day: and there are men to be found even now, who lament, that the people of Ireland were not ſuffered calmly and coolly to conſider that famous treaty, before they were made finally to reject it.

The Chancellor did alſo aſſert in the year 1789, "That the ſtatute laws of this country, having "annexed the crown of Ireland to the crown of "England, and declared it, together with all the "powers and prerogatives annexed to it, to be de-"pendant upon the crown of England, the two "Houſes of Parliament could not by law ſeparate "this country from Great Britain, during the mi-"nority or other legal incapacity of the King of "Great Britain and Ireland. He did aſſert, that "the ſtatute law of Ireland had made the great "ſeal of England a neceſſary organ of Iriſh legiſla-"tion; and had therefore diſabled any perſon, who "by the laws of England had not the command of "that organ, from acting as Regent of Ireland. "From which he inferred, that whatever powers "the Parliament of Ireland might think to intruſt "to their Regent, that they were bound to the per-"ſon who was appointed Regent of Great Britain "by the Parliament of that country; for that our "ſtatute law having annexed the crown of Ireland "to the crown of England, by neceſſity, the Re-"gent of England appointed by ſtatute, muſt, to "all imperial purpoſes, be Regent of Ireland, and "our ſtatute law having made the great ſeal of Eng-"land a neceſſary organ of Iriſh legiſlation, the "Regent of England, who could alone command "that organ muſt to all purpoſes of legiſlation be "Regent of Ireland. But that as to all acts, which "are done in this country by the authority of the "King's ſign manual, the authority of a Regent, "appointed by a Britiſh ſtatute muſt be recognized "by an act of the Iriſh Parliament, to give it effect

"in

" in this country; and the Iriſh nation are in poſ-
" ſeſſion of the arguments advanced by the Chan-
" cellor in ſupport of this opinion, and of the an-
" ſwers, which were made to them at the time they
" were advanced."

The Chancellor did alſo in the year 1789, endeavour to diſſuade the Houſe of Commons, of which he was then a member, from ſending an addreſs to his Royal Highneſs the Prince of Wales, calling upon him to aſſume the government of Ireland, until they knew, that he had aſſumed the government of England; ſtating to them, that perhaps at that moment his Majeſty had re-aſſumed the perſonal exerciſe of his authority. This, however, is omitted in the catalogue of inſinuations againſt him

The Committee of the Whig Club proceed to quibble upon a phraſe uſed by the Chancellor, " That the approbation of Alderman James was a " *neceſſary* act of public duty." The Whig Club may prove without difficulty, that there did not exiſt any *phyſical* neceſſity for the act: but under the circumſtances appearing to the Lord Lieutenant and Council, this approbation did become a neceſſary act of duty. It would have been vain to have ſent the parties to a new election: they declared by their Counſel, on the laſt day of hearing before the Lord Lieutenant, that all hope of agreement and reconciliation between them was at an end, and an approbation by the Lord Lieutenant and Council was ſolicited by both parties on that day. It was therefore neceſſary for the Lord Lieutenant and Council, acting under the impreſſions of official duty, and the obligation of their oaths, to approve of one or other of the parties, becauſe the parties had avowed their reſolution of adhering to their reſpective claims, and without an approbation of the Lord Lieutenant and Council, it was impoſſible that either of them could put their claims into a courſe of trial and de-

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ciſion. And the Lord Lieutenant and Council being reduced to this neceſſity, the Chancellor adviſed the King's Repreſentative to approve of Alderman James, who in his opinion had the better claim. The Chancellor entertaining that opinion, would have been guilty of a breach of his oath as a Privy Counſellor, if he had given any other advice.

The Committee of the Whig Club, proceed to ſtate a defence of the Earl of Charlemont and the Earl of Moira, as Peers of the realm,—a defence which they did not venture to make for themſelves in that place alone where their conduct, as hereditary judges, in the final judicature was arraignable, and where it was arraigned. But firſt the Committee of the Whig Club, *ſtop to reflect on the Chancellor*:—and they aſſert—"That he had ſet the "example to the noble Earls of that conduct which "he arraigned in them; that he had early declared "his law opinion on the ſubject, in the preſence of "the parties, which early and erroneous opinion, "is the cauſe of the diſgrace of government, and "of the ferment in the city." The only law opinion, which the Chancellor ever gave in the preſence of the parties was, "That to his judgement the ſta-"tute, however it might ſtrike them on a ſuperfi-"cial reading, would not bear out the Commons "in claiming an excluſive right of election." He ſtated this opinion, and the grounds of it to the Counſel employed by the Commons, and deſired they would argue the queſtion on the grounds which he ſtated to them. This the Committee of the Whig Club declare to be a *prejudging* of the queſtion, with what colour of truth let the nation decide. The Chancellor alſo told the Counſel, "That the "ſtatute was *inartificially* drawn;" and he did, on the two firſt days, when they appeared before the Council, recommend warmly to both parties, to agree in the choice of their Chief Magiſtrate, and

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if they could not agree, to conſult with their Recorder, and abide by the advice, which he ſhould give them; telling them, "that if, unfortunately, an illegal election took place, the youngeſt man, who "heard him, might not live to ſee the end of the "confuſion, which would ariſe in their corporation; "for, that if a Lord mayor ſhould act, whoſe election ſhould turn out to have been illegal, every "corporate act done during his mayoralty, and "the mayoralty of thoſe elected in ſucceſſion under "him, would generate a freſh ſuit in *Quo Warranto*." And the Chancellor having given this opinion and friendly admonition in the preſence of the parties, the Committee of the Whig Club calumniate him for having adviſed his Majeſty's repreſentative to approve of the man, whoſe election, he conſidered, as leaſt likely to be impeached with effect. With reſpect to the vindication, which the Committee of the Whig Club have compoſed for their noble brethren, as hereditary judges of the final judicature, as the writer of theſe Obſervations conſiders it would be unbecoming that they ſhould be arraigned as ſuch, in any place, except in the public aſſembly of which they are members, ſo he cannot, with propriety, notice their defence.

The Committee of the Whig Club proceed to inform the public, that they are *inſtructed* to collect from what was ſtated by the Chancellor, "that the "Commons were by force of bye-laws ouſted of "that ſhare in the election of Lord Mayor, "which they had before under their charters; and "that it is an addition to the caſe of the commons, "that they now deſire nothing but what they have "already by expreſs act of parliament; and until "ouſted, as is now conſeſſed, by force of bye-laws, "had originally by Charter."—Unfortunately the Committee of the Whig Club has been very ill *inſtructed* in making any ſuch inference from what was ſtated

ſtated by the Chancellor. The Chancellor ſtated, "that it had appeared to him, from the only materials "which he had been able to collect, that from the "reign of Rich. III. the right of election was exer-"ciſed excluſively by the Lord Mayor and Alder-"men, under different bye-laws." If by the charter, under which the corporation of Dublin acted at the time when theſe bye-laws were made, any right to ſhare in the electing a Chief Magiſtrate had been reſerved to the Commons, they could not have been ouſted of ſuch a right by a bye-law; becauſe the law is clear, that the number of electors appointed by a charter may be narrowed by a bye-law, provided ſuch bye-law does not exclude an *integral* part of the corporation, to which the right of election is given by charter. But no bye-law can exclude an *integral* part of the corporation from a right of voting at a corporate election given to them by charter: ſo that the legal inference, from what was ſtated by the Chancellor, is directly contrary to the inference which the Committee of the Whig Club have been *inſtructed* to draw from it. If the Commons were ouſted, nearly for two centuries, of any ſhare in electing their chief magiſtrate, by the authority of bye-laws only, the legal preſumption is, that the charter under which they acted during that period, did not give them any right to ſhare in ſuch election. It is evident, therefore, that the Committee of the Whig Club, and the great Lawyers who *inſtruct* them, may be miſtaken, when they ſit down to make legal inferences.

The Chancellor ſtated, "that it was reſerved for the ſagacity of Iriſh Whigs to diſcover, that the Lord Lieutenant and Council, acting under the new Rules, had any judicial juriſdiction to decide upon the merits of corporate elections." The Committee of the Whig Club, conſtitutionally aſſembled at their club room, to anſwer this obſervation of a peer of the

the realm, made in the Houſe of Parliament, of which he is a member, *again ſtop to reflect on the peer who made it.* And they charge him with having made a parade of judicial power at the Council Board, where he ſtated, there exiſted no judicial power by law. And the parade of judicial power adduced in ſupport of the charge is, that he informed one of the counſel for the commons, and who appears alſo one of the Committee of the Whig Club, " that it was " not his province, at that board, to lecture the Lord " Lieutenant and Council on the nature of their " duty, nor to make improper perſonal obſervations " on the members of the Privy Council. It was his " province to prove, if he could, that by law the " excluſive right of election was derived to the Com- " mons, under their power of diſapprobation." Another circumſtance adduced in proof of this parade is, that the Chancellor took notes from the corporation books of entries, which had been called for by the counſel on both ſides, and read in evidence, at their deſire, at the Council Board.

The Committee of the Whig Club having put words into the Chancellor's mouth which he never uttered, proceed to obſerve upon their own expreſſions. They affect to ſuppoſe him to have ſtated, " That the Members of the Privy Council, ſitting at the Council Board, cannot exerciſe any degree of judgment on the legality of an election;" and then proceed to a ſyllogiſm founded on their ſuppoſed ſtatement. " *The only title,* ſay the Committee, *any man* " *can have is legal election; and the only way of judging* " *who has* prima facie *the beſt title, is to exerciſe ſome* " *degree of judgment on the legality of this election,* " *unleſs the author of the Speech would ſay—that the Lord* " *Lieutenant and Council had decided, that Alderman James* " *had the beſt* prima facie *right of election, without ex-* " *erciſing in fact any judgment at all upon the election.*" And then they conclude triumphantly, " *That the*

" *Chancellor,*

" *Chancellor ſtands in flat contradiction to himſelf, and* " *impeaches the proceeding which he ſeeks to defend.*"

The aſſertion made by the Chancellor was—" that the Lord Lieutenant and Council had no judicial juriſdiction to decide upon the merits of the election." And it was reſerved for the peculiar ſagacity of the Iriſh Whigs to diſcover, that becauſe the Privy Council, as a body, has no judicial juriſdiction to decide upon the merits of an election; that therefore, the individual members have no power to exerciſe any degree of judgment on its legality, in order to guide their diſcretion in doing an act of duty, which is the proper ſubject of their juriſdiction. The Chancellor ſtated what the proper ſubject of the juriſdiction of the Council is:—" That it is ſimply—the perſonal qualifications of the men elected; that when two perſons were returned to the Privy Council, as elected to the ſame corporate office, the Lord Lieutenant and Council had no judicial juriſdiction to decide upon the merits of either election; that in ſuch a caſe, if no perſonal objection lay to either of the parties, the members of the Privy Council were, from ſuch materials as were laid before them, bound to approve of the man who had, *prima facie*, the beſt title. In determining their diſcretion in ſuch a caſe, undoubtedly the individual members of the Council muſt exerciſe ſome degree of judgment upon the legality of the election: but not having any juriſdiction to decide upon the merits of it, their approbation cannot affect the rights of the parties, which are left free and open to inveſtigation before the proper tribunal."

The Committee of the Whig Club add however, that the Lord Lieutenant and Council *rejected that Alderman who,* prima facie, *was elected; and approved of that Alderman who,* prima facie, *was rejected; and decided not only againſt the right, but againſt the colourable title, in favour of the man who had neither.*

To

To this concluſion of the Whig Club, we beg leave to retort one of their own obſervations, made at the outſet of their vindication—" *It is not the flippant aſſertion of the Committee of the Whig Club, which in this free country can make the law.*" By the known principles of the law of England, the only controul put upon the right of election is, an obligation on the parties in whom that right is veſted, not to elect a perſon legally diſqualified for the franchiſe to which they elect him. By the known principles of the law of England, a condition is annexed to a power of approbation given to a ſelect body of a corporation, viz.—that it ſhall not be withheld arbitrarily, and without juſt cauſe. And it is not for the Whig Club to determine that the proviſo in the clauſe, which gives this power of approbation to the Commons, or the clauſe in the ſtatute which directs, that this approbation ſhall be given by ballot, do *neceſſarily* ſubvert theſe fundamental principles of the common law; or that they do neceſſarily transfer the right of election from the Lord Mayor and Aldermen, (who appear to have exerciſed it under their charters nearly for two centuries, and to whom it has been confirmed by authority of a ſtatute) to another ſelect body of the corporation, who can claim it only by implication, as derived to them, under a power of diſapprobation.

The writer of theſe Obſervations will ſuppoſe for a moment, that the right of electing their Chief Magiſtrate had been given by the ſtatute to the Commons, and a power of diſapprobation only to the Lord Mayor and Aldermen; and that the Chancellor, ſtanding upon the principles of the common law had told the Lord-Mayor and Aldermen—" By the " principles of the common law you cannot invade " the right of election reſerved to the Commons; you " muſt exerciſe your power of diſapprobation with " diſcretion. The common law obliges you to ap-

prove

" prove of the man whom the Commons have elect-
" ed, unleſs you have a juſt cauſe of objection to
" him. Lord Holt has expounded the law upon
" this ſubject. He has determined that the election
" is conſummate before the approbation, and that
" a mere power of rejection gives no choice." Would the Whig Club in this caſe have come forward to lament that the laws had been invaded, that the rights of the metropolis had been diſregarded? Would the Whig Club, in this caſe, have claſſed the preſent Chancellor of Ireland, with the Chancellor of James II. or would they have claſſed him with the Whig Chief Juſtice of England, in the reign of Queen Anne? Poſſibly they would have gone further, and elected him by acclamation a member of their ſociety for his ſteady ſupport of the Independence of the metropolis, as they did that reſpectable character Mr. James Napper Tandy.

The obſervations of the Committee of the Whig Club upon diſaffection and perſonal incapacity are ſo very perplexed, that it is difficult to aſcertain their meaning.—Diſaffection to the government, and corporate incapacity, are certainly diſtinct objects. The firſt ſeems, properly, the immediate ſubject of the Lord Lieutenant and Privy Council; the latter, that of the Commons of the Common Council. The power of diſapprobation is certainly given to both bodies, nearly in the ſame words; in the exerciſe of this power, however, there is certainly this obvious difference:—The Lord Lieutenant and Privy Council exerciſing their power of diſapprobation, as a council of State, cannot, as a body, be called upon by any other power, to aſſign the reaſons which govern them in the exerciſe of it; but if they abuſe it, they are perſonally and individually reſponſible for the abuſe; whereas the Commons of the Common Council, exerciſing the ſame power of diſapprobation as a body corporate, are *not* perſonally

and

and individually anſwerable for the abuſe of it; and therefore it is, that there is a tribunal, which is empowered by the laws and conſtitution to call upon them as a corporate body, to aſſign the reaſons which govern them in the exerciſe of *that* power; and upon the validity of their reaſons, that tribunal is to judge:—And the Committee of the Whig Club may be inſtructed, if they will inform themſelves upon the ſubject, that the particular juriſdiction exerciſed by the Court of King's-Bench in ſubjects of this nature, is founded on the 29th chapter of the great charter:—*Nulli negabimus, nulli differemus juſtitiam.*

The Chancellor did, on the firſt or ſecond day, when the contending parties appeared before the Council Board, warn them of the confuſion which would ariſe in the corporation, if unfortunately an illegal Chief Magiſtrate ſhould act. He told them that freſh ſuits would ſpring up every day in conſequence of it; for which reaſon, he warmly recommended them to agree in their choice of their Lord Mayor. And on the laſt day, when both parties declared their reſolution, to adhere to their claims, he told them, that after they had been two or three years in the Court of King's Bench, they would be heartily ſick of it.—To theſe admonitions for the ſake of agreement and conciliation, the turn given by the Committee of the Whig Club is, that the Chancellor informed the corporation of the city of Dublin, *that redreſs would be a grievance, and that he had caſt a damp and deſpondency on appealing to the law of the land:* and left this malicious perverſion of what was ſtated by the Chancellor at the Council-board ſhould fail of effect, in diſſuading the citizens of Dublin from ſubmitting the inveſtigation of their claims to a court of law, and in encouraging them to perſiſt in aſſerting them by force, the Committee of the Whig Club proceed to inſinuate to them, "*that the judges*

of the land are capable of making a criminal deciſion againſt them, and that the miniſters of the crown would protect the judges who ſhould make it:—and that it was partiality to a faction in the city, which induced the Chancellor to concur in approving Alderman James.

The Committee of the Whig Club proceed to republiſh the original Reſolution, propounded by the two noble Earls, in order to prove, that they did not ſuppoſe the Lord Lieutenant and Council to have exerciſed any judicial juriſdiction. If that is indeed the caſe, if they did not ſuppoſe that any ſuch juriſdiction was exerciſed; or that the approbation of the Lord Lieutenant and Council had diſpoſed of the queſtion of right; or that they were competent to determine that queſtion of right; the writer of theſe OBSERVATIONS truſts, that he has proved (to uſe the temperate language of the vindication) firſt, *the great and manifeſt preſumption of the authors of that reſolution, in charging the Lord Lieutenant and Council with an invaſion of the law and of the rights of the metropolis;* and ſecondly, *their great and unparalleled folly and temerity, in republiſhing that charge which had been ſo fully, ſo publicly, and ſo ſhamefully refuted.*

The Committee of the Whig Club, in order to prove to the nation the veracity of their aſſertion—that they are not influenced by perſonal animoſity to the Chancellor, kindly compare him to the memorable Chancellor of James II. It were injuſtice to the Committee of the Whig Club, not to ſtate the compariſon in their own words, "*We muſt ſuppoſe the author* (which is the mode in which they point out the Chancellor throughout the whole of their publication) *conceives the charge of violating the laws, implies of itſelf the exerciſing a judicial power: But the crime of diſpenſing with the laws has not been confined to great lawyers exerciſing judicial power. The author of the ſpeech might have read, how James II. had diſpenſed with*

with the teſt act, without reſorting to judicial power but by mere executive act: He had, it is true, the aſſiſtance of a great judicial character, his famous Chancellor, a great lawyer, and a melancholy proof, that the moſt dangerous inſtrument in the hands of oppreſſion is an arbitrary man, hurried away by a criminal diſregard of his fellow citizens, and armed with the little points of his profeſſion, to pervert the ſcience of the law, and to aſſail the liberties of the people." This is the picture which the Committee of the Whig Club hold up to the Iriſh nation of Lord Fitzgibbon, and for what offence? Becauſe, ſitting at the Council-board, where his oath of a Privy Counſellor obliges him truly to counſel the King's Repreſentative, he preſumed to give an opinion founded upon the principles of the common law of England and Ireland, which he has made the ſtudy of his life; becauſe he ventured to form an opinion, founded on the ſame principles, which the Committee of the Whig Club pronounce to be illegal; and to doubt *that* expoſition of a ſtatute, which they contend it ought to receive. Becauſe having given that opinion on his oath, and ſeeing it arraigned in the public prints by two Peers of the realm, as an invaſion of the laws and of the rights of the metropolis, he preſumed to call upon them in their places, as Peers of the realm to juſtify the charge; and upon their declining ſo to do, he preſumed in his place, as a Peer of the realm, publicly to refute it. This is the offence given to the Committee of the Whig Club by the Chancellor. And for this offence the Committee of the Whig Club, retiring to their club-room, under the pretence of vindicating their body from charges which never were made againſt it, iſſue to the world, and ſign their names to a compoſition, perverting and miſtating every word, which had been uttered by the Chancellor in the Houſe of Peers, or in any other public aſſembly during his life; which they

hoped

hoped might accumulate popular odium and reſentment upon his head; charging him with having given an opinion on his oath, from motives of partiality, to a faction in the city; accuſing him of having diſpenſed with the laws; and finally comparing him to a man, whoſe memory is held in execration by every ſubject of the Britiſh empire.

The Committee of the Whig Club having informed the Iriſh nation, that their preſent Chancellor is the counterpart of Judge Jeffryes, approach the point—*but again they ſtop to reflect on his Lordſhip*, aſſerting, *that in the only point in which he had ſhewn diffidence, confidence would have been a proof of firmneſs or an evidence of innocence, viz. the point in queſtion, whether by the act of Parliament, the Common Council is obliged to aſſign corporate incapacity as ground of rejection: on the affirmative of this, depends the innocence of the Council; and here*, ſay the Committee of the Whig Club, *the Chancellor has hung back: He allows he has examined the point as much as any that came before him, and will not venture to ſpeak to the queſtion; and only diffidently tells us, that it appeared to him, that Alderman James had but the beſt colour of election, that he had the beſt claim, without venturing to aſſign a ſingle reaſon for ſuch an opinion, or advancing a ſyllable in ſupport of ſo* NOVEL *a conſtruction:*" and then the Committee of the Whig Club put it to the nation to ſay, *Whether this reſerve proceeds from moderation or defect.* The writer of theſe Obſervations, deſires to remind the Committee of the Whig Club, 1ſt, That the Chancellor never did ſtate, that corporate incapacity muſt be aſſigned by the Commons as the cauſe of rejection; but he ſtated his opinion, that by the general law they muſt aſſign a juſt cauſe of objection: 2dly, That when he called upon their two noble brethren to ſupport the charge which they had made, that the approbation of Alderman James was an invaſion of the laws; *whether from moderation*

tion or defect, they did with inflexible reſerve decline to advance a ſyllable in defence of themſelves or in ſupport of the charge, when they were publicly told, "That radical ignorance of the laws and conſtitution was the beſt apology which could be "made for them as authors of it." 3dly, That the Chancellor did expreſly declare, that he ſhould conſider himſelf guilty of great impropriety, if he had formed a *final* opinion upon the queſtion, as it had not come judicially before him; but that from what had appeared, he did not ſcruple to pronounce, that he thought the Commons had not the power which they claimed under the ſtatute; that from what had appeared, Alderman James had the better claim; and having thus ſtated, that he had not, and would not form a *final* opinion upon the queſtion, till it ſhould come judicially before him; the Committee of the Whig Club calumniate him, becauſe he did not prejudice the minds of his hearers on the ſubject, by arguing the point of law in the court of final judicature, before it had been put into a courſe of trial in the courts below, and *that* at the very moment he had diſclaimed his having made up a final opinion.

The Committee of the Whig Club go further, and becauſe the Chancellor has not formed a final opinion, they load him with additional calumny for that very circumſtance; and impute it to him, as *evidence of guilt and want of firmneſs*. It ſeems, however, the Chancellor is not inclined to form final opinions upon the corporate rights of the citizens of Dublin, as *flippantly* as the Committee of the Whig Club. His Lordſhip perhaps, is of opinion, that it may be neceſſary for the judges to inſpect the charters of the corporation; that it may be neceſſary their uſages ſhould be inveſtigated and aſcertained by a jury, before any final judicial opinion is formed upon their corporate rights. No ſuch inveſtigation

or inſpection can be made by the Lord Lieutenant and Council; and, therefore, the Chancellor has declared, that he has formed no *final* opinion upon the queſtion in conteſt, but has limited himſelf to this expreſſion, " that from what appeared to him, Alderman James had the better claim." And this opinion, ſo delivered by the Chancellor, was worthy of a good judge and a ſound lawyer. It was the opinion of a man, who felt that additional light might probably be thrown on the queſtion, when it came to be inveſtigated in the proper tribunal; and who, therefore, in anſwer to a charge, that the act in which he had concurred, was an invaſion of the law, contented himſelf with explaining generally the ground of the proceedings which had been ſo arraigned—of a man who felt, that till the queſtion came finally and judicially before him, he ought not to argue it publickly, leſt by ſo doing, he might pre-occupy and prejudice the public mind reſpecting it.

In juſtice to the Committee of the Whig Club, it muſt be acknowledged, they do not practice the reſerve, which they condemn ſo pointedly in the Chancellor. They have given their reaſons at full length for their *final* and *judicial* opinion upon the merits of Alderman James's election.

And firſt, they ſay, by the ſtatute 33d Geo. II. " that no man, can be mayor of Dublin, who is rejected by the Commons;" So by the charter of the corporation of Norwich, no man, elected by the Ward, can be an Alderman, who is rejected by the Mayor and Aldermen. But Lord Holt ſays, that this power of rejection gives the Mayor and Aldermen a right of approbation only, and no choice, and therefore, if they reject arbitrarily, the court of King's Bench will compel them to approve. The Committee of the Whig Club are of a different opinion.

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The Committee of the Whig Club ſay, *the right of Rejection in the Commons is co-extenſive with the right of Election in the Board, both being limited in one and the ſame proviſo, which duly requires that the Board ſhall elect, and the Commons approve of ſome one of the Board.* Here the Whig Club are ſomewhat miſtaken in point of fact. The right of election and the power of approbation are not limited by the ſame proviſo; there is not a ſyllable in the ſtatute which alters the right of election exerciſed by the Lord Mayor and Aldermen for nearly two centuries, and confirmed to them by the new rules. The clauſe under which the Commons derive their power of approbation, directs, that the name of the perſon who ſhall hereafter be elected Lord Mayor, by the Lord Mayor and Aldermen, ſhall be returned by them to the Commons for their approbation, and, therefore, the right of election is left untouched by the ſtatute. It remains with the Lord Mayor and Aldermen, as they had it under their Charters and the new rules, ſubject only to the controul impoſed on it by the ſtatute, after it is conſummate:—But ſuppoſe the Committee of the Whig Club not to be miſtaken in point of fact, they are miſtaken in point of law. The right of election and the power of approbation, if limited by the ſame ſtatute, are not co-extenſive; they are diſtinct acts, to be done by different ſelect bodies of the ſame corporation, and the election is conſummate before approbation. By the charter of Norwich the right of electing the Alderman is in the Ward, and by the ſame charter the Aldermen have a power to reject. It was argued, in that caſe, by counſel, that the right of election and the power of approbation are extenſive;—that is, in plain Engliſh, that there was no election till it was approved by the court of Aldermen. Lord Holt determined, that the right of election and the power of approbation were *not* co-extenſive: that they were diſtinct acts to be done by

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diſtinct bodies; that the election was conſummate before approbation, and that approbation gave no choice.

The Committee of the Whig Club inform us that there is not one word in the ſtatute *which obliges the Commons to aſſign corporate incapacities as the ground of rejection,—that the ballot clauſe makes ſuch aſſignment impracticable and illegal.* Undoubtedly there is not a ſyllable in the Statute which obliges the Commons to aſſign corporate incapacities, as the ground of rejection; nor did the Chancellor ever ſay, that they were confined to ſuch an aſſignment. But if the general law of the land annexes a condition to the exerciſe of a power of approbation given to a ſelect body of a corporation, viz. that it ſhall not be exerciſed arbitrarily, that it ſhall not be withheld without a juſt cauſe; it is not for the Committee of the Whig Club to take upon them to determine, either that the proviſo, that the Commons ſhall approve of ſome *one* perſon from among the Aldermen, or the clauſe which directs, that their approbation muſt be given by ballot, do by *neceſſary implication*, diveſt that power of approbation of the condition annexed to it by the general law, and by *neceſſary implication* transfer a right of election to the Commons from that body, to which it is excluſively reſerved in *expreſs terms*; neither is it for the Lord Lieutenant and Council to take upon them to determine any ſuch queſtion. If, indeed, they had taken upon them the determination of ſuch a queſtion, they would have aſſumed and exerciſed a judicial juriſdiction, to decide in the firſt inſtance an abſtract, and at beſt a doubtful point of law, and in ſo doing, they would have indeed invaded the laws and the rights of the metropolis.

The Committee of the Whig Club proceed to obſerve—*that the aſſignment of a cauſe of rejection is a new requiſite, created by conſtruction, to impoſe a forfeiture*

feiture of the benefit of the act, contrary to the principles of criminal juriſprudence. How the principles of criminal juriſprudence are applicable to the conſtruction of an act of Parliament conferring civil rights, the Whig Club have not condeſcended to explain. But again they are miſtaken in point of fact. The aſſignment of a cauſe of rejection is *not* a *new* requiſite created by conſtruction. It is a requiſite annexed to the power of approbation by the common law, and has been ſo recognized by the judges of Weſtminſter-hall in every caſe, in which it aroſe. And it is not the Chancellor, but the Committee of the Whig Club who reſort to conſtruction to diveſt the power of approbation of this requiſite, which the common law annexes to it, in order to impoſe a forfeiture of the right of election on the Lord Mayor and Aldermen, to whom it is reſerved excluſively, in expreſs terms, *contrary to the principles of criminal juriſprudence*, if they are to have any weight in the determination of this queſtion.

The great argument of the Committee of the Whig Club is, that—*the ſtatute has made the approbation of the Commons neceſſary to enable any man elected Lord Mayor to act in the office.* And they accuſe the Lord Lieutenant and Council, of *having diſpenſed with the law in approving Alderman James, who was diſapproved by the Commons*, and throughout the whole of their vindication, as they term it, they take it for granted, that *the law is clear, that the Commons may ſtand juſtified in withholding their approbation arbitrarily.* If the act had ſtopped at the clauſe, which makes this approbation neceſſary, Alderman James, when the Commons had diſapproved of him, muſt have applied to the court of King's Bench for a *mandamus* to compel them to approve of him, as has always been done in ſimilar inſtances in Weſtminſter-hall; and then the point of law, which the Committee of the Whig Club have adjudged ſo po-

 ſitively,

ſitively, would have been ſettled by the proper tribunal, before Alderman James had been returned to the Lord Lieutenant and Council for their approbation. But the act has ſtrangely provided in general terms; that if on the day appointed for electing the Chief Magiſtrate, either body ſhall be guilty of a default in any of the duties preſcribed to them by the ſtatute, the excluſive right of election ſhall devolve to the other, which proviſion puts it out of the power of the man, who has been diſapproved, to reſort in the firſt inſtance to the court of King's Bench. And accordingly in the preſent caſe, each of the parties charged the other with default—each of them claimed the excluſive right of election in conſequence, and each of them returned an Alderman to the Lord Lieutenant and Council as duly elected Lord Mayor. If the act giveth the Commons an arbitrary negative, which amounts virtually to an excluſive right of election, the default was in the Aldermen in not electing another member of their body, after Alderman James had been diſapproved: if on the contrary, the Commons take the power of approbation under the ſtatute, ſubject to the known reſtrictions annexed to it by the common law, the default was in them in withholding their approbation from Alderman James, to whom they acknowledged, there did not lie any juſt cauſe of objection. And the Committee of the Whig Club charge the Lord Lieutenant and Council with having *diſpenſed* with the law, becauſe they would not determine for the Commons, that the ſeveral proviſoes quoted by the Committee of the Whig Club, have by neceſſary implication diveſted the power of diſapprobation of that reſtriction, which is confeſſedly impoſed on it by the common law, and thus transferred the right of election from the Aldermen to the Commons. They charge the Lord Lieutenant and Council with having *diſpenſed* with the law, becauſe they have

have remitted the Commons to the proper tribunal to ſettle this abſtract point—a point which never yet has been determined, according to the adjudication of the Whig Club, but on the contrary, in every caſe in which it has ariſen in Weſtminſter-hall, has been uniformly determined againſt that adjudication.

The Committee of the Whig Club go on to obſerve, that *the proceedings of the Privy Council under the new rules, which are conceived nearly in the ſame terms as the act of Parliament, without the ſtrong circumſtance of a ballot, alone are a precedent againſt the doctrine. For the Council does not aſſign corporate incapacities as a ground of rejection.* The Committee muſt have been hard driven for argument, when they hazarded this obſervation. The power of diſapprobation certainly is given to the Lord Lieutenant and council nearly in the ſame terms by the new rules, in which the ſame power is given to the Commons by the ſtatute 33d George II. and the oath of ſecrecy, under which the members of the Privy Council act at the Council Board, ſeems to furniſh at leaſt as ſtrong implication in favour of their having an arbitrary power of diſapprobation, as the ballot clauſe furniſhes in favour of the arbitrary power claimed by the Commons. But ſay the Committee of the Whig Club, the *Privy Council does not aſſign corporate incapacity as a ground of rejection.* Certainly they do not. Nor is there any tribunal impowered by law to call upon the Lord Lieutenant and Privy Council as a body, to aſſign their reaſons for rejection, or for any other act of Council. They ſit as a Council of State. The oath of ſecrecy taken by a Privy Counſellor would alone prevent any ſuch interference of any other tribunal: But as they cannot be called upon to aſſign their reaſons as a body, they are individually reſponſible at the bar of a court of criminal juriſdiction for any abuſe of their

powers

powers. And therefore, if they were to invade the right of election veſted in the different corporations put under their ſuperintendance, by arbitrarily withholding their approbation of men elected to corporate offices, againſt whom no juſt cauſe of objection lay, they would be individually and criminally reſponſible for the abuſe of their power. But what is the caſe of a power of diſapprobation given to a ſelect body of a corporation? They take it as a body corporate. Taking it *as ſuch*, they are *not* perſonally and individually reſponſible at the bar of a criminal court for the abuſe of it; and therefore it is that they are bound, if called upon by the proper tribunal, to aſſign the reaſons which govern them in the exerciſe of it. If the truth of the reaſons aſſigned be denied by the party who complains, it muſt be enquired into by a jury, upon a traverſe of the return made to a writ of *Mandamus*. If the truth of the reaſons aſſigned be admitted, then the court of King's Bench determine upon the validity of them; If they appear ſufficient to the court to juſtify the corporate body in withholding their approbation, then the return to the *Mandamus* is allowed: If the court determine the reaſons to be inſufficient, then a peremptory *Mandamus* is ſent to compel them to approve. This courſe, however, the ill-judged proviſions of the ſtatute of the 33d of Geo. II. have prevented Alderman James from taking; and therefore he was obliged in the firſt inſtance, to come before the Lord Lieutenant and Privy Council for their approbation, in order to enable him to go to the proper tribunal for a deciſion upon the nature and extent of the power given to the Commons by the ſtatute. It never was doubted that every corporate act of every corporate body is ſubject to the controul of the court of King's Bench, which court, by the laws and conſtitution, is empowered to correct every abuſe of every power committed

ted to a public corporation; and to ſee, that they are exerciſed according to the reſtrictions annexed to them by the common law; ſo that the Committee of the Whig Club, acknowledging that the power of diſapprobation is given to the Lord Lieutenant and Council nearly in the ſame terms in which it is given to the Commons of the Common Council, ſeem to have reduced themſelves to an inextricable dilemma. If the power of approbation given by ſtatute law to the Commons is arbitrary, the ſame power given in the ſame words, by the ſame authority, to the Lord Lieutenant and Council, muſt be alſo arbitrary; and then, according to the law, as ſettled by the Committee of the Whig Club, the excluſive right of election reſts with the Lord Lieutenant and Council, and not in the Commons, to whom they have adjudged it. If it is not, and the Lord Lieutenant and Council are criminally and individually reſponſible for the abuſe of it, every argument which proves that they are ſo reſponſible, is equally ſtrong to prove, that the Commons of the Common Council are bound by law to aſſign their reaſons for diſapproving, whenever they ſhall be called upon ſo to do by the Court of King's Bench; becauſe the ſame principle, upon which the members of the Privy Council are *individually* reſponſible for an abuſe of their power of diſapprobation, compels the Commons to aſſign their reaſons for diſapproving; in order that they may not be ſuffered to commit an abuſe, for which *they* are *not* perſonally and individually reſponſible.

The Committee of the Whig Club further obſerve, *that the meaning and object of the act is againſt the reſtriction impoſed on the power of approbation by the common law; becauſe the meaning and ſpirit of the act would be defeated by it, inaſmuch as ſuch a conſtruction would take away from the Commons the right of rejection.* This is the aſſertion—and mark how it is proved. "*For*, ſay

ſay the Committee, *if the Commons could reject no man but one who laboured under corporate incapacities, they could reject no man, who was not before ineligible, and and who could not be Mayor tho' the Commons approved, and all the other Aldermen elected by the Board, muſt be Mayors, tho' the Commons did not approve of them.*" That is, in plain Engliſh, if the Commons are to take this power, with the reſtrictions annexed to it by law, they will be prevented from abuſing the power, which is the ſole object of the reſtriction. The purpoſes for which the law ſuppoſes a power of approbation in a ſelect body of a corporation, after election, to be neceſſary, are, to prevent perſons ineligible to the franchiſe from ſerving, if the electors ſhall, in breach of their duty chuſe them; or to prevent them from ſerving, if they have not been duly elected: And accordingly, a legal diſqualification, or an undue election are the only returns which can be made to a *Mandamus* to admit or approve. Becauſe if no legal perſonal objection lies to the man, a due election to the franchiſe gives him, by the fundamental principles of the law, a right to the full and free exerciſe and enjoyment of it. Before the ſtatute of the 33d of Geo. II. the Commons had no manner of controul over the election of their chief magiſtrate. That ſtatute, however, has given them a controul known to the general law, "a power of diſapprobation." by which they are enabled to judge firſt, of the legality of the election, and next of the perſonal qualifications of the man elected; and this controul, thus given to the Commons, cannot extend beyond theſe limits, unleſs the proviſos, which follow the enacting part of the clauſe, giving the controul, or unleſs the balloting clauſe do by neceſſary implication change the nature of the power, and convert it into a right of election;—which is the queſtion *finally* and *judicially decided* by the Committee of the Whig Club, but, upon which, the Chancellor

cellor is ſuppoſed to hold a different opinion, and which he declares *ought to be ſent to the proper tribunal for diſcuſſion and deciſion.* This argument, advanced by the Committee of the Whig Club in ſupport of their adjudication, fortified indeed by a ſubſequent calculation upon the merits of the preſent court of Aldermen, is nothing more, than that a power of approbation, given to a ſelect body of a corporation, is a *deluſion*, unleſs it be ſtripped of the reſtrictions which the law impoſes on it, to prevent an abuſe of the power.

The Committee of the Whig Club, in order to manifeſt their impartiality on the ſubject of the preſent conteſt in the metropolis, conclude their law argument with a calculation upon the corporate capacity of the preſent court of Aldermen. They declare—*they have every reaſon to believe that there is not a ſingle Alderman in the city of Dublin, who labors under any corporate incapacity.* And from this eulogium founded on the perſonal merits of the preſent Board, they conclude, that the conſtruction, which the Chancellor ſeems to think the ſtatute ought to receive, will make it a *deluſion.* The writer of theſe Obſervations is utterly unacquainted with the Aldermen of the city of Dublin: he is, however, very well pleaſed at the honourable teſtimony born to their corporate capacities. Unfortunately, however, the Chancellor, who is to expound the ſtatute on his oath, may think himſelf obliged to expound it upon known principles of law, and not upon any conſideration ariſing from the perſonal merits of the preſent race of Dublin Aldermen. And if by the known principles of the common law, a power of diſapprobation given to a ſelect body, is given merely as a controul upon the elective franchiſe, to prevent the admiſſion of perſons into corporate offices, who have not been duly elected, or are perſonally diſqualified to ſerve;—and if the ſtatute which has given the power to the Commons, has not by neceſ-

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ſary implication altered the nature of it, and converted it into a power, ſubverting the elective franchiſe and not merely controuling it, the Commons of the city of Dublin muſt ſubmit to the deluſion ſtated by the Committee of the Whig Club unleſs the legiſlature ſhall think it right to enlarge their powers.

And the writer of theſe Obſervations ſubmits it to be conſidered—which is the greateſt deluſion. An expreſs excluſive right of election ſubject to a reaſonable power of approbation, which to prevent inconſiſtency, the law has recognized and defined, as controuling, not extinguiſhing the right, or an expreſs excluſive right of election, ſubject to an arbitrary power of approbation, at which common ſenſe and the perfection of it, the common law revolts, as involving a contradiction in its exerciſe, as ſuperſeding by implication an abſolute and poſitive grant, and under the ſemblance of regulation, transferring and uſurping the right it ſhould merely controul. This is indeed a kind of *deluſion* for which the Committee of the Whig Club may with propriety contend; but which neither ſenſe nor the law will concur with them to eſtabliſh.

The writer of theſe Obſervations *with all due deference to the authority of the Whig Club, when it ſhall keep within the bounds of law and decorum*, has thus taken the liberty to animadvert on the paper, which their Committee have prepared under the title of "Their Vindication." but which every man who reads it calmly and coolly, muſt pronounce to be an unprovoked and invidious perſonal attack on the firſt judicial character of the nation. And *he does acknowledge, and is ſorry to ſee it*, that ſome men of rank and influence in the ſtate, and of undoubted private worth and honour, have been miſguided to put their names to this malicious production.—An act utterly unworthy ſome of the men whoſe names

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are affixed to it, as groſly traducing a judge, becauſe he differs from the Committee of the Whig Club on an abſtract point of law—calumniating a peer of the realm, becauſe he uſed his privilege in the Houſe of Parliament, of which he is a member, and directly inconſiſtent with the profeſſed principles of the Iriſh Whig Inſtitution, The writer of theſe Obſervations knows nothing of the Whig Club: he knows not of whom it is compoſed, nor what are the principles of their aſſociation; except that he collects they are a ſet of Gentlemen who have aſſociated for political purpoſes, and in politics are pledged to each other. If a Place-Bill, a Penſion-Bill, a Reſponſibility-Bill, a Repeal of the Dublin Police Act, and other propoſitions, which they profeſs their determination of ſupporting in Parliament, are really neceſſary meaſures for the proſperity of their country, they are fair objects for political aſſociation. But let not men aſſociated in politics, preſume to interfere in the deciſion of civil rights, which by the laws and conſtitution are cognizable only by the judges of the land. Let them not attempt to overawe the judges of the land, in the diſcuſſion or deciſion of any civil right. If the Whig Club ſhall arrogate to themſelves judicial functions, if they ſhall preſume to propound judicial opinions to the nation, and to traduce and calumniate a judge, who will not ſubſcribe to their opinion, they ſhake to their foundations the laws and conſtitution which they profeſs to defend. They ſet a pernicious example to the people. They teach them to decline a conſtitutional appeal to the laws, for redreſs of ſuppoſed injuries, and to decide for themſelves. They inſtruct them to make every queſtion of right a queſtion of force, they teach the judges of the land, ſo far as in them lies, in deciding queſtions of right to blink the law, and look to the politics of the day: And if a judge has honeſty and firmneſs

to diſregard the politics of the day, and to look to the law, which he is ſworn to interpret, they teach the people to hold him in diſtruſt and abhorrence—they exhort them to deſert an appeal to the laws, and to reſort to force. If a judge is notoriouſly ignorant of the laws which he ought to expound, let him be removed from the ſeat of Juſtice: if he is corrupt, let him be extirpated from the face of the earth. But let not men, profeſſedly aſſociated to preſerve the laws and conſtitution, lightly advance a charge of ignorance and corruption againſt any man placed in the ſeat of Juſtice—let them firſt be aſſured that the charge is founded, and when they are aſſured that it is founded, let them prove it to the nation, and drag him from his ſeat.

So long as the Members of the Whig Club confine themſelves to the proper objects of their inſtitution, the Writer of theſe Obſervations will never conſider himſelf warranted in animadverting upon them. But whenever they ſtep beyond their ſphere, and ſhall attempt to make a queſtion of civil right a political queſtion—whenever they ſhall attempt to overawe the judges of the land in the diſcuſſion or deciſion of ſuch a queſtion, *He* will be ready to repel the invaſion.

THE

SPEECH OF THE LORD CHANCELLOR,

AS INSERTED IN THE NEWSPAPERS,

HOUSE OF LORDS.

SATURDAY, JULY 24.

My Lords,

I THINK it neceſſary to take notice of a moſt extraordinary and violent clamour which has been raiſed on account of the deciſion of the Lord Lieutenant and Privy Council, in the caſe of Alderman James; and for no other reaſon whatever, but that his Excellency and the Council have diſcharged their duty, by putting the queſtion in a ſtate of being tried by due courſe of law: This clamour, I underſtand, my Lords, has been moſt induſtriouſly ſpread through the kingdom, by reſtleſs and diſcontented men; nay, the contagion has even invaded theſe walls. While it was confined to the cabals and debates of thoſe porter-houſe clubs which labour nightly for the good of this country, I conſidered it as perfectly inoffenſive, and unworthy of notice;—but when I ſee the names of two noble Lords giving ſanction to it, it demands my regard.

What I allude to, my Lords, is a publication containing the names of two noble perſons, juſtly eſtimable for their high characters, and which I ſhall now take the liberty of reading to your Lordſhips.

Here the Chancellor read the following advertiſement from a newſpaper:

"DUBLIN, July 19, 1790.

"At a Meeting of the WHIG CLUB, held this Day, (HIS GRACE the DUKE OF LEINSTER in the CHAIR);

"The following RESOLUTION was propoſed by the Right Hon. the EARL OF CHARLEMONT, and ſeconded by the Right Hon. the EARL OF MOIRA, viz:

"THAT the WHIG CLUB cannot poſſibly have witneſſed what has lately paſſed reſpecting the ELECTION of a LORD MAYOR

MAYOR, without expreſſing the deepeſt concern, and declaring that they will, both individually, and as a body, co-operate with their FELLOW-CITIZENS in every legal and conſtitutional Meaſure, which may tend to VINDICATE THE LAWS, and to SUPPORT THE RIGHTS OF THIS METROPOLIS."

"WHICH Reſolution being put, the ſame was paſſed UNANIMOUSLY, and ordered to be entered on their Books, and publiſhed.

Signed,

HENRY GRATTAN,

PRO. SECRETARY."

Now, my Lords, if this reſolution had appeared only under the authority of the Whig Club, ſigned by their Secretary, or Pro. Secretary, I would have treated it as I would any other reſolution of any other eating or drinking club; but when a charge is made, or ſtrongly inſinuated, when this charge is, that in an act to which my name is ſigned, an attack has been made upon the rights of this metropolis, and an invaſion of the law of the land—when it appears authenticated by the names of two of the Hereditary Counſellors of the Crown, two of the Hereditary Judges of the Land, it becomes neceſſary to know, whether they have really ſubmitted to have their names placed to it? And if ſo, they are called upon to do away the ambiguity and marked caution of the terms in which the publication is conceived; to declare that there is an invaſion of Right, and to ſhew where that invaſion is, to the end that if it ariſe from any act to which I have put my hand, I may retract it.

I do therefore now call upon thoſe noble Lords, whom I ſee in their places, to know whether they will avow that their names were inſerted it this publication with their knowledge and conſent, or whether the whole is not a vile forgery, and without their concurrence?—If they avow it, I am now ready to diſcuſs the queſtion face to face with the noble Lords, in this Houſe, and where I may do it without diſgrace: Otherwiſe it is not for me to take notice of the reſolutions of drinking clubs. But the names of two noble Lords, having appeared in a publicaton, containing broad inſinuations againſt the Lord Lieutenant and Privy Council, and againſt an act to which I have put my hand, it therefore becomes me to call upon them to diſavow the publication, or the noble Lords to ariſe in their places, and maintain the charge: if they can

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ſupport it by argument, and by law, I ſhall be the firſt man to retract an erroneous oppinion; if they cannot, they ſhould not by broad inſinuations calumniate thoſe who revere the laws.

But my Lords, I truſt it will be found an atrocious libel upon the noble perſonages, and that it was inſerted in the newſpapers without their knowledge.

Lord Moira—My Lords, I have heard the publication juſt read, and I do avow that I did conſent to have my name put to it.

Lord Charlemont concurred by a ſimilar aſſertion.

Lord Chancellor. The publication is now avowed, my Lords; and though it would be diſgraceful to make any reply to the Reſolutions of the Commons of the Common Council, the Whig Club, or the Aggregate body, with which the columns of our newſpapers are filled, it becomes me to ſhew that the act of the Lord Lieutenant and Privy Council approving of Alderman James, to which I have ſet my hand, is a ſtrictly legal act; and that if the reſolution is levelled againſt that act, it is a libellous miſrepreſentation of a neceſſary act of public duty, and the only apology that can be offered for it is a complete and radical ignorance of the Law and Conſtitution, in thoſe who made it; this, I truſt, I ſhall now prove to the plaineſt and moſt unlettered underſtanding.

For the preſent, I paſs by that new ſyſtem of juriſprudence which has lately been held out by two of his Majeſty's hereditary Counſellors, two of the hereditary Judges of this Land, which is, that they may in the firſt inſtance pronounce judgment, and promulgate their decrees in the columns of a newſpaper, in a caſe which may come to be decided by them in the dernier reſort; it is for them to defend this new ſyſtem of juriſprudence; to ſhew the rectitude of becoming parties, where they may be called upon to decide as judges: but when they attack the Lord Lieutenant and Council for an act to which I have ſet my hand, it is my duty to ſhew what the law is, and that that act is ſtrictly conſonant to law.

I muſt for this purpoſe treſpaſs upon your Lordſhips, in order to ſtate briefly the hiſtory of the Conſtitution of this metropolis. The Corporation of Dublin conſiſts of a Lord Mayor and 24 Aldermen, Sheriffs and Commons of the Common Council, which repreſent the whole Commonalty thereof. From the time of Richard III. under various bye-laws the Lord Mayor was annually choſen by the Board of Aldermen alone, without the interference or approbation of any other body

It was not till the reign of Charles II. that any authority was given to Government by ſtatute to interfere with the election of the Chief Magiſtrate. In that reign the Corporation Act was paſſed in England; and the Act of the eighteenth of Charles, under which the new rules were formed in Ireland: The principle and end of both which Acts was to prevent perſons diſaffected to Church or State from holding offices of high truſt or authority in Corporations. To accompliſh this object in Ireland, the approbation of the Chief

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Governor for the time being, and Privy Council, is made neceſſary to every election of a Chief Magiſtrate in the Corporations ſubject to the act, which approbation is underſtood as an acknowledgment on the part of the Privy Council, that the man ſo elected is well affected to the Church and State, and has, therefore, no perſonal diſability to prevent his ſerving the office. It was reſerved for the peculiar ſagacity of Iriſh Whigs to transform this right of approbation into a judicial power, which indeed, is ſuch a perverſion of ſenſe and meaning, as could only ariſe from the greateſt confuſion of ideas that ever diſtracted the brain of man—for what leſs could ſuggeſt an opinion that the Council had any judicial power whatſoever. The ſingle object of enquiry, which comes before the Council is, whether the perſon returned to them, is or is not a man well affected to Church and State—whether he labours under any perſonal diſability. When double returns have been made, it has been always conſidered as almoſt matter of courſe to approve of one of the parties returned, and by this means the queſtion is put into a ſituation of being tried at law. The Privy Council have no authority to judge of the legality of an election; they approve the man who appears *prima facie* to have the beſt title, provided he is well affected to Church and State—this is their peculiar conſideration; but the queſtion of right and the merits of the election muſt be decided firſt in the King's Bench, and ultimately before your Lordſhips—Now it ſingularly happens from the framing of the law, that in caſe of double returns, the queſtion of right never can come before the King's Bench, or before your Lordſhips, and never can be put in courſe of trial at all, till the Lord Lieutenant and Council approve of one of the perſons returned; and, therefore it is, that it has always been conſidered as matter of courſe for the Lord Lieutenant and Council to approve of one of the parties: This was the caſe again and again with reſpect to Galway, this was the caſe again and again with reſpect to Clonmel; the Council have always been ſlow to interfere in the diſputes of Corporations, their object has been to refer them to the proper judicature for trial; nor did it ever enter into any man's head, that they poſſeſſed or aſſumed a judicial power in election until the 19th day of July, 1790, on which day the judicial manifeſto of the Whig Club bears date.

I have already ſaid, that from the reign of Richard III. to that of Charles II. the election of Lord Mayor was ſolely and excluſively in the Board of Aldermen; that it was not till the 18th of Charles II. that any authority was given to Government to interfere at all in theſe elections: that under the 18th of Charles, the new rules were formed, and by them the right of election of a Lord Mayor was confirmed to the Board of Aldermen only, and continued to them for ever.

In 1759, an act was paſſed, materially altering the conſtitution of the city in other reſpects—but retaining to the Board of Alder-

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men the election of the Lord Mayor, and giving to the Commons a power of approbation.*

From 1759, to this day, though ſome diſputes have ariſen between the Board of Aldermen and the Commons, yet they have been all ſettled, and the parties have mutually agreed, except in in the caſe of Alderman James; in that caſe, they both declare their determination of ſupporting their ſeveral pretentions.

There have been in this buſineſs three double returns made to the Lord Lieutenant and Council, and the parties have been heard with patient attention, taking it altogether for eighteen or nineteen hours. The firſt election of Alderman James was diſapproved by the Commons; the Board ſent down ſucceſſively ſeven other Aldermen, who were likewiſe diſapproved by the Commons. The Aſſembly was diſſolved; and as the act preſcribes, the Board met the following day, elected Alderman James, and returned him to the Privy Council. The Commons likewiſe met, elected Alderman Howiſon, and returned him. Upon hearing Counſel on the caſe, each party charged the other with default, and the Lord Lieutenant and Privy Council, unwilling to interfere, and hoping the parties would ſettle the buſineſs among themſelves, ſent them to a new election. No reconciliation, however, took place—the ſame returns were again made; they were heard a ſecond time, and a ſecond time ſent to a new election.

A third time the ſame double return was made, and the parties did then by their Counſel declare their reſolution not to agree, and prayed the Lord Lieutenant and Council to approve of one, that the queſtion might go to a Court of Law. Should the Lord Lieutenant and Council have refuſed to ſuffer the matter to be put into a due courſe of trial, there would then have been ſome cauſe for diſcontent; but they acted according to their duty, knowing they had no judicial power themſelves, they approved of one of the perſons returned, as matter of courſe—and allowed the queſtion to go to the proper judicature for trial.

My Lords, I have conſidered this queſtion over and over again, with as much attention and with as much zeal to diſcover the truth, as ever I beſtowed on any ſubject. I ſhould be guilty of great impropriety, were I to declare a judicial and final opinion until the matter comes judicially before the Houſe: But I do not heſitate to ſay, after the beſt conſideration that I have been able to give the ſubject, after conſulting every book from which I could hope to receive any light or any information, it did appear to me, that Alderman James had the better colour of election. In this, however, I would not be underſtood to ſay, that I have made any ultimate or final deciſion—for the queſtion has never come judicially before me, and is ſtill open to argument; but from what I have hitherto heard, Alderman James has the better claim.

* See the ſecond clauſe of the Act in the Appendix.

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I have ſpent the greateſt part of my life in endeavouring to acquire a knowledge of the law, and this is the opinion which I have formed upon the beſt conſideration of the ſubject; yet, when it comes to the Bar of this Houſe for deciſion, if any thing appears in evidence, if any thing appears in argument, ſufficient to change that opinion, I ſhall not be aſhamed to retract it. It is certain there are amongſt wiſe and able men, a variety of opinions on the ſubject—ſome adhering to the ſtrict letter of the ſtatute of 33d George II. others comparing that ſtatute with the New Rules, and conſtruing that ſtatute by the general known principles of common law; but which is right, or which is wrong, certain I am, the Whig Club, aſſembled to dine at Ryan's Tavern, are utterly incapable of judging; and certain I am, that no deciſion could ever have been had on the ſubject if the Lord Lieutenant and Council had not approved of one of the perſons returned.

I have in my view a noble Lord, before whom the queſtion will firſt come for deciſion, I dare ſay, that noble Lord will direct the Jury to find a verdict ſpecially, that the queſtion may be ſolemnly argued. I don't think a Judge would be juſtifiable who would decide upon it at Niſi Prius.

As to Alderman James, my Lords, the deciſion of the Lord Lieutenant and Council is of no authority whatſoever, if his election be illegal, that deciſion does not affect to legalize it—it merely puts it in courſe of trial before the proper tribunal. If the judge whom the law appoints to ſwear in the Lord Mayor of Dublin, ſhall, upon view of the caſe, think Alderman James not duly elected, he may refuſe to ſwear him; in that caſe Alderman James may go into the Court of King's Bench, and apply for a *Mandamus* directed to that Judge; if the Judge perſeveres in his opinion, he will make a return of *Non eſt electus*, and then the merits of the caſe may betried; but if, on the contrary, the Judge ſhall think him duly elected, and ſwear him in, even though his election was illegal, he will be an officer *de facto*, and every neceſſary act of his, in performance of his duty, will be as valid, as if his election were legal.

And now, my Lords, I call upon any man to ſhew me how the act of the Lord Lieutenant and Privy Council is an infringement on the right of election, or how it invades the laws and the freedom of the metropolis: Suppoſe the law otherwiſe than as I conceive it, is the queſtion to be decided by clamour and noiſe? Are they—the hereditary judges of the land—inſtead of appealing to the Court of King's Bench in the firſt inſtance, and to this Houſe in the dernier reſort, are they, I ſay, to appeal to the Whig Club—or the Aggregate Body—or to men with National Cockades in their hats? If ſo, what is to become of property! My Lords, this Country is, I am afraid, driven upon the verge of a precipice; and I am well aware there is a ſet of diſcontented men who would puſh her on to ruin. Good God! is it not manifeſt? Who are the men that invade the laws, the Lord Lieutenant and Council who ſend the queſtion of

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right to a legal decision, or those who would shut up the Courts of Justice, and appeal to Whig Clubs, Aggregate Meetings, or men with arms in their hands and national cockades in their hats? It has been much the fashion to decide questions by clamour—but surely there never was a question less proper for such a decision, than that to which the resolution of the Whig Club points: If that question is to be decided by clamour, you may shut up the Courts indeed, and leave every peaceable honest man without redress; for every question that ever came before the King's Bench, the Exchequer, the Common Pleas, or the Chancery, may as well be decided by clamour, as that between the contending parts of the Corporation of Dublin; and if so, what becomes of the law?

My Lords, if turbulent persons would desist from their practices, this country would be in a state of unexampled prosperity—which nothing can prevent her from enjoying, but factious contentions for power. But if, My Lords, every question of law is to be made a question of Party—if every question is to be decided by clamour—if every man who is bold enough honestly to speak his opinion, is to be villified and traduced, who that can live out of the country will remain a moment in it?

The Chancellor then concluded, by assuring the noble Lords, that what he had said was not from any disregard to them, for whom he had a high respect: But so often as any noble Lord should make a charge against him, he would call upon him in that House, face to face, to avow and support the charge; that in case he should be proved to have done wrong, he might retract his error, and in the hope that if he should refute the charge of his accusers, they would have the candour to retract theirs.

And therefore, said he, I do now my Lords, call upon those noble Lords whose names have appeared in the resolutions of the Whig Club, to rise in their places and meet the question—perfectly open to conviction, if they convince me, I will retract my opinion; if they do not rise, I should hope I have convinced them. I should apologize for engrossing so much of your Lordship's time—but when two names, appertaining to characters so highly respectable, appear in newspaper Resolutions insinuating censure on the Lord Lieutenant and Council. I think it my duty to deliver my sentiments on the subject, and explain it in the fullest and most public manner.

Monday, 2d August, 1790.

AT

A MEETING OF THE WHIG CLUB,

THIS DAY,

THE CLUB APPOINTED A COMMITTEE TO PREPARE THEIR VINDICATION.

THE COMMITTEE:

DUKE OF LEINSTER,	::	MR. GRATTAN,
EARL OF MOIRA,	::	MR. CURRAN,
EARL OF CHARLEMONT,	::	SIR EDWARD NEWENHAM,
EARL OF ARRAN,	::	MR. EGAN,
MR. PONSONBY,	::	MR. HAMILTON ROWAN.

☞ *The* DUKE *of* LEINSTER *reported the Resolution of the* COMMITTEE, *which was accordingly read and unanimously agreed to—and is as follows:*

WE have seen a publication containing various and extraordinary charges against the Members of this Society, comparing them to those of "porter-clubs, and such like low and riotous meetings;" and further alleging "that they are persons of the grossest ignorance; that they have shewn that ignorance particularly in their late resolution on behalf of the Rights of the Subject, and that they have discovered, on this occasion, as great a perversion of sense as ever distracted the human brain."

We should have passed by such a publication as one of those flippant productions, with which the present Ministers of the Crown, by their writers, vilify the people, if said empty paper did not affect to call itself the Speech of the Chancellor.

We could wish the composition had confined itself to us, and had not spread its foul contents upon the Common Council of Dublin, and the Citizens in general, on behalf of their privileges when legally assembled. We are sorry to have given any one an occasion to aggravate *their* present situation, and to overwhelm with a torrent of abuse, men already struggling under great wrong.

We cannot avoid expressing our disapprobation of such a *malapert* way of addressing the people, a disregard for whom, under any Government is unwise, under a free Government, graceless, and in a Minister, disqualification to hold the reins of power.—We have not forgotten the gross language once before offered to the people—

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it was when they defended their country againſt the famous Propoſitions. We flattered ourſelves that we ſhould never again be witneſs to the like froward diſcourſe.—The Citizens, however, will bear with patience an evil it ſeems they only ſhare in common with the reſt of their fellow ſubjects:—As for ourſelves, obſervations falling from no ſuperior height of public virtue, make no impreſſion.

The author of the publication aſſerts, that the act of Council to which our reſolution of the former meeting refers, was ſtrictly legal: but it is not in a free country that the aſſertion of any one man can decide. Had aſſertion been ſufficient, there was not wanting prompt and flippant aſſertion againſt all your exertions. You had the aſſertion of great Law Officers againſt your Declaration of Right—you had their aſſertion in favour of the famous Propoſitions—and you had their aſſertion that the King legiſlated in Ireland, as King of Great Britain, and *that the Britiſh Parliament could make, for certain purpoſes, a ſtatute Regent for* Ireland, *and that a Regent ſo made, could ſuperſede the one appointed* by your own Parliament. This nation paid but little regard to ſuch aſſertions; and whatever ſhe has acquired in conſtitution and conſideration, is due to her wiſdom in holding ſuch aſſertions, and the aſſertors thereof, as fallible and ſuſpicious.

The author of the paper is made to declare, that the rejecting of Alderman Howiſon, and the approving Alderman James, was a neceſſary act of public duty. Here we are concerned to be obliged directly, to contradict the author. It was not a neceſſary act of public duty. It was not neceſſary, however proper at that particular time, to approve of either, for the parties might have been ſent back to a new election; but if approbation *of one or the other* was unavoidable, it was not neceſſary to give the preference in favour of Alderman James, who could not ſerve, and to reject Alderman Howiſon, who was legally elected.

To prove the truth of this part of the ſpeech, three things are indiſpenſible, none of which are *true*. 1ſt, That the parties could not have been ſent back to a new election. 2d, that the Council could not by law approve of Alderman Howiſon. 3d, That they could not by law refuſe Alderman James.

On the firſt great part of the defence, we muſt then obſerve, that it is not founded in fact, that it advances the plea of neceſſity, which notoriouſly did not exiſt, and that the reſorting to ſuch a plea, beſpeaks in the author, a ſecret conviction, that ſuch a proceeding can be excuſed by nothing elſe but the plea of neceſſity.—From a miſrepreſentation of fact, in the outſet of the defence, the author of the ſpeech proceeds to promiſe, that he will prove his point to the conviction of mankind—the moſt unlettered man. But firſt, he ſtops to reflect on the Peers; and the author of the ſpeech condemns two noble Lords, for expreſſing their ſentiments on a point of right, which may afterwards come before them as Judges. Their Lordſhips, however, if they wiſhed to ſhelter themſelves under authority have it,

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and on this very point, in the perſon of the L. Chancellor: Who did declare in the preſence of the parties and the public, his law opinion very early on this very queſtion, of which opinion the public were, by himſelf and his friends, fully poſſeſſed, and the public is much deceived, if his early and erroneous opinion on this ſubject has not been the principal cauſe of the diſgrace of the government and the ferment of the city. The noble Lords will not, however, ſhelter themſelves under his authority. They conceive that however improper to declare an early opinion in caſe of private property, yet where privileges are violated, where corporate rights are attacked, it is not unbecoming the Peers of the realm to take an early part, and to conſider themſelves not merely as hereditary Judges, but (what they value more infinitely) as hereditary Freemen. Bound by intereſt—bound by affection—and now by the offences of his Majeſty's Miniſters and their contumely—bound more than ever to make common cauſe with their countrymen, they ſhould have thought they betrayed the liberties of their country, if they had waited for three years, the term idly preſcribed to the Citizens to amuſe themſelves in the Courts of Juſtice. And we ſay for ourſelves, without preſuming to dictate to others, that whenever the Miniſters of the Crown ſhall, as in the preſent caſe, attack the rights of the people, we ſhall always be forthcoming—uniting with our fellow ſubjects in common defence and common danger.

The author of the ſpeech proceeds to give the public, on the preſent queſtion, hiſtoric information, and he informs us, that the right of electing the Lord Mayor was veſted, by the laws, in the Board of Aldermen ſolely.—We know it, and we further know, and from this admiſſion are inſtructed to collect, that the Commons were, by force of thoſe bye laws, ouſted of that ſhare in the election of the Lord Mayor which they had before under charters: And it is in addition to the caſe of the Commons, that they now deſire nothing, but what they have already, by expreſs Act of Parliament, and until ouſted, as is now confeſſed, by force of bye laws, had originally by Charter.

The author of the ſpeech informs us, that it was by the new rules, the Lord Lieutenant and Council got the right of approbation, but he adds, that they got no judicial power. However, we cannot forget on a late occaſion, that they diſplayed ſome things much reſembling the exerciſe of a judicial power, when the Chancellor limitted the Lawyers to ſpeak to the abſtract point of law, and when the books of the Corporation were ſent for and examined, and the Corporators interrogated, touching their teſts and engagements. It is not for us to reconcile this parade of judicial authority, with the opinion of the author of the ſpeech denying the Council any judicial power; it is ſufficient to ſay, that the obſervation has nothing to do with the queſtion. The queſtion not being whether the Lord Lieutenant and Council have given an erroneous judgment, but whether they have not committed an arbitrary and illegal act.

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The author of the ſpeech now approaches the point, and ſtates, that the Council has not only no judicial power, but no power to judge of the legality of the election. Here again we find it impoſſible to reconcile the opinion of the author with the proceedings of the Council. For the Council, and the Chancellor in particular, as a member of that Council, did examine publicly, and in the preſence of the parties, into the merits of the election, and the conduct of the ballot, and limited the lawyers to the abſtract point of law, and interrogated the Common Councilmen, and explored the books and minutes of the Corporations and Common Council, and enquired into the teſts taken by the different Corporations, or ſaid to be taken againſt electing of the Police Magiſtrates; All which was, as we conceive, enquiring into facts, and an inſiſtance on matter that could relate to nothing but the legality of the election, of which the author now aſſerts the Council had no authority to judge.

The author of the ſpeech proceeds to explain what power the Council have, and ſtates it to be a power to approve of the man who has, *prima facie*, the beſt title.—Now the only title any man can have is legal election, and the only way of judging who has, *prima facie*, the beſt title, is to exerciſe ſome degree of judgment on the legality of his election; unleſs the author of the ſpeech would ſay that the Lord Lieutenant and Council had decided that Alderman James had the beſt *prima facie* title, without exerciſing in fact any judgment whatever on the ſubject.—Thus does the author ſtand in flat contradiction to himſelf, and thus does he impeach all thoſe proceedings which he affects to defend. We might well agree with the author, that the Council have only a power to return him who, *prima facie* has the beſt title. We might add, they are obliged ſo to do; and we complain that they rejected that Alderman, who, *prima facie*, was elected, and approved of that Alderman, who, *prima facie*, was rejected, and decided not only againſt the right, but the colorable title in favour of the man who had neither.

We have not forgotten, that the Chancellor declared to the lawyers, *'tis true, on a ſuperficial reading of the act of Parliament, the words will bear out the conſtruction of the Commons.*

The author proceeds, and explains ſtill further the powers of the Council, and ſays that the Council is confined to a ſingle object, and profeſſing to exemplify a ſingle object, he ſtates two.—The firſt he ſtates is diſaffection; the other perſonal diſability. Perſonal diſability is legal incapacity—diſaffection a wicked perverſion of mind—good cauſe for a complete excluſion from office, but which can work no legal incapacity, until brought into action. Thus the author either confounds legal diſability with diſaffection, or he aſſerts, that the Lord Lieutenant and Council have a power to inquire into the queſtion of legal diſability, which relates merely to thoſe merits, and that right, that the ſame author has juſt alleged belong excluſively to another Judicature—the Courts of Law.

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The author has ſtated, that the Council derive their power under the new rules,—and the new rules are conceived in the words of the 33d of Geo. II. under which the Common Council derives its power. The author ſtates diſaffection to be the ſingle object for the inquiry of the Privy Council; it remained for him to prove diſaffection to be merely a law queſtion, of corporate incapacity, or to allow that the Common Council was not confined to that law queſtion, by the act of Parliament, and ſo give up the opinion advanced by the Chancellor. The author ſeems aware of the difficulty: He therefore enumerates two diſtinct objects, diſaffection and legal incapacity as one and the ſame, committing a ſoleciſm in terms, to ſecure a ſtudied confuſion in ſenſe.

The ſpeech informs us that in a double return, to approve of one has always been a matter of courſe; Here we are again ſorry to be obliged directly to contradict the author of the ſpeech; it has not been a matter of courſe—it has been common to approve of neither—it has been common to ſend back the parties to a new election—it was the caſe in 1763—it was the caſe twice this very year.—But even though the author of the ſpeech ſhould not have been wrong, as he is, in point of fact, yet he would remain wrong in point of argument. To make out his defence, it is not ſufficient to prove it a matter of courſe to approve of one of the parties, he muſt ſhew it to be a matter of indifference upon which of the two the favourable determination of the Council ſhould reſt, whether upon the man who is legally elected, or upon the man who is by law diſqualified; Or rather, indeed, he muſt go farther for a precedent, and ſhow it to be a matter of courſe to approve of the latter, that is of the man diſqualified by law.

The author of the ſpeech informs us, that the Council cannot decide the point of law—We acknowledge it, but we did not want the interpoſition of the author to give that information. But though the author informs us there is redreſs at law, yet the perſon whoſe name he aſſumes has alſo informed us that ſuch redreſs would be a grievance, and that the city, after amuſing itſelf for three years in the Courts of Juſtice, would be heartily ſick of the experiment. Our reſpect for decency prevents us from going ſo far *with this authority* as to caſt a damp and deſpondency on appealing to the law of the land: Yet we do agree, that the forcing the city to that appeal was a very great injury, becauſe the redreſs might be very tedious—the interim might be very diſturbed, and the period of the Mayoralty expire before the point could be ſettled.

There is a further objection—could we ſuppoſe the Courts of Law capable of a criminal deciſion, we have a miniſtry diſpoſed to give them protection.

The author of the ſpeech would teach us to believe, that the Chief Governor and Council decided in favor of Alderman James merely to put the queſtion in courſe of trial. We are to underſtand, then, that there was no partiality in the Adminiſtration and and that no faction in the city, has been eſpouſed by the Caſtle or

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by the raſh adviſers of the Caſtle. When once the author of the ſpeech can prove this, he will then, and not till then, have ſupport his credit for the veracity of this ſuggeſtion.

The author of the ſpeech proceeds and ſays, that it remained for the ſagacity of *Iriſh* Whigs, to turn a mere right of approbation into a judicial power: But we muſt obſerve, that it remained for the ingenuity and temper of the author, that to diſcover wherein the Whigs have made that confuſion; for certainly in the reſolution alluded to, they have not. We inſert the Reſolution that the public may judge.

"*That the* WHIG CLUB *cannot poſſibly have witneſſed what has lately paſſed reſpecting the election of a Lord Mayor, without expreſſing the deepeſt concern, and declaring that they will, both individually, and as a body, co-operate with their Fellow Citizens in every legal and conſtitutional meaſure, which may tend to* VINDICATE THE LAWS, *and to* SUPPORT THE RIGHTS OF THIS METROPOLIS.

We muſt obſerve, that the principal charge of ignorance, was founded, as appears in the ſpeech—on this, our ſuppoſed confuſion, of the right of approbation with a judicial power—Here is the Reſolution, wherein appears not one ſyllable to juſtify the comment, and hence the public will collect two things. Firſt, the great and manifeſt preſumption of the author, in making in ſo groſs a manner ſo unfounded a charge. Secondly, his great and unparalleled folly and temerity in making that charge, when, by the mere republication of the Reſolution, he could be ſo fully, ſo publicly, and ſo ſhamefully convicted.

In order to account for his obſervation, we muſt ſuppoſe the author of the publication to conceive, that the charge of violating the laws, implies of itſelf, the exerciſing a judicial power: But the crime of diſpenſing with the laws, has not been confined to great lawyers exerciſing judicial power—The author of the ſpeech might have read how James II. had diſpenſed with the Teſt Act, without reſorting to the exerciſe of judicial power, but by mere executive act: He had, 'tis true, the aſſiſtance of a great judicial Character, his famous Chancellor, a great lawyer, and a melancholy proof, that the moſt dangerous inſtrument in the hand of oppreſſion, is an arbitrary man, hurried away by a criminal diſregard for his fellow citizens, and armed with the little points of his profeſſion, to pervert the ſcience of the law, and to aſſail the liberties of the people.

We have obſerved upon and examined the principal part of this poor and poſitive production—that affects to call itſelf the ſpeech of the Chancellor.—The public will judge whether it contains that extent of genius,—ſolidity of argument, and profundity of ſenſe, which could juſtify a modeſt man in pronouncing that he would completely, and to the moſt unlettered perſon, convince the whole community.

We muſt obſerve, that, in one point, the author of the Speech has ſhewn diffidence; tho' it is the only point in which confidence would

would have been a proof of firmneſs, or an evidence of innocence, viz. the point in queſtion, whether by the act of Parliament the Common Council is obliged to aſſign corporate incapacity as ground of rejection: On the affirmative of this depends the innocence of the order of Council; and here the author has hung back.—He allows he has examined this point as much as any that ever came before him; he had three months to inveſtigate it.—The Government has taken a decided part—the city has been put in a ferment—the Adminiſtration overwhelmed in diſgrace—and now, it ſeems, the author will not venture to ſpeak to the queſtion—and only diffidently tells us, that it did appear to him that Alderman James had the *beſt colour of election*;—that from what he *has heard hitherto*, James has the beſt *claim*, without venturing to aſſign a ſingle reaſon for ſuch an opinion, or advancing one ſyllable in ſupport of that novel conſtruction which he muſt feel has involved us in ſuch a train of conſequences. We leave it to the public to decide whether this reſerve in the author proceeds from moderation or defeat.

We do not think it neceſſary now to go at large into the argument: But as from the Speech under our conſideration, no trace whatever of the merits of the queſtion appears, we think it proper to ſtate from the act of the 33d of George II. the following obvious inferences, that by the act no man can be Mayor of the city who is rejected by the Commons; that the right of rejection in the Commons is co-extenſive with the right of election in the Board, both being limited by one and the ſame proviſo, which only requires that the Board ſhall elect, and the Commons approve of ſome one of the Board;—and ſubject to that proviſo leaves both equally free; that there is not in the whole act one ſingle ſyllable requiring the Commons to aſſign corporate incapacities, as the ground of rejection; —that the ballot clauſe makes ſuch an aſſignment of reaſons impracticable, and illegal; that ſuch aſſignment is a new requiſite, created by conſtruction, to impoſe a forfeiture of the benefit of the act, contrary to the principle of criminal juriſprudence; that the proceedings of the Privy Council, under the new rules, which are conceived in nearly the ſame terms as the act of Parliament, without the ſtrong circumſtance of the ballot are a precedent againſt this doctrine, for the Council does not aſſign corporate incapacities as a ground of rejection.

That the ſpirit and meaning of the act is againſt it, ſince the profeſſed object of the act muſt be defeated by ſuch conſtruction, inaſmuch as ſuch a conſtruction would take from the Commons, the right of rejecting; For if they could reject no man but one who laboured under corporate incapacities, they could reject no man that was not before ineligible, and who could not be Mayor, though the Commons approved; and all the other Aldermen elected by the Board muſt be Mayors, though the Commons rejected them. There is every reaſon to believe that there is ſcarcely to be found at preſent one Alderman that labours under a corporate incapacity, of courſe,

under this conſtruction, there is not one Alderman whom the Commons could refuſe. This conſtruction, therefore, for ſo much, makes the act of Parliament a deluſion.

We, therefore, with all due deference to legal authority, when it ſhall keep itſelf within the bounds of law and decorum, have republiſhed our reſolutions. We beg leave to add, that the act of the Council, to which we do acknowledge the Lord Chancellor, (and we are ſorry to ſee it) has put his hand, is an arbitrary act—impoſing on the city, as far as it can have effect, an illegal Magiſtrate, and depriving the Common Council of Dublin of a right they derive under Act of Parliament.

The author of the Speech puts a queſtion, who moſt invade the laws, the Lord Lieutenant and Council, or they who appeal to the Whig Club?—Since we are called upon, we anſwer, the Lord Lieutenant and Council. The Lord Lieutenant and Council, ſays the author of the ſpeech, who ſend the matter to a legal deciſion? They do ſo, we allow it. They oblige the party, by an arbitrary act, to ſeek redreſs at law, as any man who commits a violence on another may be ſaid to ſend the matter to a legal deciſion.—But we never heard it pleaded as a proof of the defendant's regard for the law, that he had, by an aſſault on the plaintiff, ſent the matter to a legal deciſion. This puerile interrogatory is calculated to move our ſcorn.

We confeſs, we have not forced the Citizens to ſuch a tribunal, for we have not injured them, but ſo far from diſſuading from ſeeking legal redreſs, we are ready to aſſiſt the City in demanding it.

We aſſociated to preſerve the laws and conſtitution, againſt the attacks of the preſent Adminiſtration, who invaded both, and who were pronounced to have done ſo by Parliament. We aſſociated when the privileges of both Houſes had been queſtioned.—When the Miniſter was exhorted by his unconſtitutional adviſer, to inſult the legiſlature. When the two Houſes pronounced that Miniſter and his adviſers, to be arbitrary and unconſtitutional men. When a number of new places, penſions, and ſalaries were created, for the purpoſe of corrupting Parliament. When Peerages were ſold for procuring money to be expended in the purchaſe of ſeats for the dependants of the Caſtle, in the aſſembly of the people. When the liberty of the preſs, and the perſonal liberty of the ſubject, by holding him to arbitrary and exceſſive bail, were attacked; when we had a Miniſter ready to ſcreen ſuch attack from Parliamentary enquiry: when a place-bill, a penſion-bill, and every other conſtitutional bill made neceſſary by the corruptions of the preſent Miniſters, were rejected by their influence.—When theſe things took place we aſſembled—we aſſembled when the nation was told (by *authority*) that in order to defeat the oppoſition of the ariſtocracy in Parliament, the Miniſter had, in the Government of the Marquis of Townſhend, expended half a million, and that in order to defeat the preſent ariſtocracy muſt expend another half million, which

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was to inform us, that the nation had been, by his Majeſty's Miniſter, bought and ſold, and muſt be bought and ſold again.

We appeal to the people of England, whether, if they were informed by a great officer of State, that their country had been bought and ſold for half a million, and muſt be ſo again, to carry the Miniſter triumphantly through Parliament; whether they would not, like us, have aſſociated in common defence; and if the people of this country, being once poſſeſſed of this alarming and dreadful ſecret, have gone no further than bearing their humble teſtimony againſt Miniſters, it is becauſe the people are not as raſh as thoſe Miniſters either in their conduct or declaration.

We have been charged by the author of the ſpeech with the crime of looking to power.—We make no aſſertion, inſtead of aſſertion we ſet forth the following meaſures to which we are all pledged.

A Place Bill,—a Penſion Bill,—a Bill to repeal or modify the City Police Bill,—a Bill to reſtrain the miniſter from arbitrarily extending the Country Police, a Reſponſibility Bill,—a Bill to diſqualify the dependant Officers of the Revenue from voting for Members of Parliament.—We are pledged to diſallow the corrupt charges of the Marquis of Buckingham, and his ſucceſſor.—We are pledged againſt the ſale of Peerages, and for the Liberty of the Preſs, and for the perſonal Liberty of the ſubject againſt arbitrary and illegal bail.—We are pledged to the principles whereon the late Parliament addreſſed his Royal Highneſs the Prince of Wales to take on himſelf the Regency, and againſt the aſſertions and principles, that advanced and maintained, in the appointment of a Regent, the authority of the Parliament of another country, and would have denied to the Iriſh Crown its legiſlative power, and of courſe its imperial dignity. We are pledged againſt an Union; we are pledged againſt the memorable Propoſitions; and we are NOW pledged to oppoſe the miſconſtruction or the alteration of the act of the 33d Geo. II. whereby the Commons of this city have a peremptory right of rejection; which peremptory right we will ſupport. If any thing is here omitted, it will be found in our original declaration; and we have already appointed a Committee to procure copies of the bills already mentioned, that the Country may, if ſhe pleaſes, adopt them, or at leaſt may know how far, and how ſpecifically we are embarked in her intereſt. WE HAVE NO PERSONAL ANIMOSITY; BUT SHOULD ANY OF THE MINISTERS OF THE CROWN ATTEMPT TO TRAMPLE ON THE PEOPLE, WE ARE READY TO DEFEND THEM.—*We conclude.*

Reſolved, That the affectionate and reſpectful thanks of this body be returned to the earl of MOIRA and the Earl of CHARLEMONT, for their ſpirited and dignified avowal of the part which they have taken in our Deliberations and Reſolutions; and for the truly patriotic regard which their Lordſhips have ſhewn for the invaded

vaded privileges of their fellow citizens, and for their zealous ſupport of the Law of the Land.

Reſolved, That a Committee be appointed to ſit during the vacation, to correſpond with the Members of this and other Societies, and to prepare ſuch meaſures as may be rendered neceſſary to defend our Principles and our Character;—with a power to aſſemble this Club on any emergency, to ſubmit ſaid meaſures to them for their Conſideration, on giving due notice.

Signed,

HENRY GRATTAN, Pro. Sec.

THE FOLLOWING MEMBERS ARE APPOINTED

A COMMITTEE OF CORRESPONDENCE.

DUKE of LEINSTER,
EARL of MOIRA,
EARL of CHARLEMONT,
EARL of ARRAN,
Rt. Hon. W. B. PONSONBY, M. P.
Rt. Hon. H. GRATTAN, M. P.
Sir E. NEWENHAM, Kt. M. P.
J. P. CURRAN, Eſq. M. P.
ARTHUR BROWNE, Eſq. M. P.
JOHN EGAN, Eſq. M. P.
JOHN EDWARDS, Eſq.
TRAVERS HARTLEY, Eſq.
COGHILL CRAMER, Eſq.
GEORGE MAQUAY, Eſq.
Rev. RICHARD STACK.

A

PLAIN STATE OF FACTS.

Copied from Faulkner's Journal, of the 24th ult.

The People of Ireland are requeſted to attend to the following plain ſtatement of facts, and to judge for themſelves:

THE Corporation of Dublin, which has certainly exiſted from the time of Henry III. as appears by ſeveral charters now extant, conſiſts of a Lord Mayor, Aldermen, Sheriffs, and Commonalty. To obviate the inconveniences which would neceſſarily ariſe from the numbers of the Commonalty, if corporate acts were to be done by the Corporation at large, it is repreſented by the Lord Mayor, Aldermen, Sheriffs, Sheriffs Peers—not exceeding 48, and 96 Freemen elected out of the different Guilds, which compoſe the Commonalty. This Repreſentative Body is called the Common Council, and all corporate acts of the whole Corporation are done by this body, or by the different integral parts of which it is compoſed.

It appears, that originally the Citizens elected a Lord Mayor, annually from among themſelves; but that from the 3d year of the reign of Richard III. down to the reign of Charles II. the Lord Mayor was elected by the Aldermen from among themſelves, under the authority of ſeveral by-laws, made from time to time, to regulate the mode of his election; ſave that during that period a bye-law was made, by which ſixteen of the Citizens were aſſociated with the Aldermen, in the election of a Lord Mayor. This bye-law was however repealed in three years after it had been made, and the *excluſive* right of election was reſtored to the Aldermen.

The firſt alteration which was made in the Conſtitution of the City of Dublin by authority of a ſtatute, was in the reign of Charles II. The Act of Explanation, as it is called, which paſſed in the 18th year of that reign, empowered the Lord Lieutenant and Council, during the ſpace of ſeven years from the 29th of September 1665, to make and eſtabliſh ſuch rules, orders, and directions for the better regulating all Cities, walled Towns and Corporations new and old in Ireland, and the electing Magiſtrates and Officers therein, as they in their wiſdoms ſhall ſee fit.—Under the authority of this act, the Lord Lieutenant and Privy Council on the twenty-fourth day of September, 1672, made and publiſhed ſeveral Rules for the better regulation of many of the Corporations in this kingdom, and among others the Corporation of the City of Dublin. Theſe are known by the name of the New Rules, and are at this day binding upon all Corporations to which they extend, unleſs where they have been altered by ſubſequent ſtatutes. The firſt rule,

ſo far as it reſpects the Election of the Lord Mayor, Sheriffs and Treaſurer of the City is in theſe words—" The election of the " Lord Mayor, Sheriffs, and Treaſurer of the City of Dublin, " ſhall be for ever hereafter *only* by the Lord Mayor and Aldermen, " there always being eight Aldermen at the leaſt preſent at the time " of ſuch Election. *And no other perſon or perſons whatſoever ſhall " at any time hereafter have at the election of the ſaid officers, or any of " them.*"—It is obſerveable that the Statute of the 33d George II. expreſsly alters the mode of electing Sheriffs, preſcribed by this rule, and directs, that the Commons of the Common Council ſhall *nominate* eight perſons, out of which the Aldermen ſhall *elect* two to ſerve the office of Sheriff, but that the ſame Statute does not in any manner after the mode of electing the Lord Mayor and Treaſurer; The election of both theſe officers is at this day made under the authority of this rule; and it is not until *after* the election of a Lord Mayor, at which the Lord Mayor and Aldermen alone have any right to vote; that by the Statute of the 33d George II. any communication whatever upon the ſubject, is to be made to the Commons of the Common Council. It is obſerveable alſo, that this rule, ſo far as it reſpects the right of electing a Lord Mayor, made no variation whatever in the right, as eſtabliſhed and exerciſed under the charters from the 3d Richard III. down to the 25th Charles II.

But to guard againſt the admiſſion of perſons diſaffected to the Government, and to the principal corporate offices of the city of Dublin, this rule further provides, " That upon all elections to be " hereafter made, of any perſon or perſons to ſerve in any of the " offices of Lord Mayor, Sheriffs, Recorder, or Town Clerk of " the ſaid Corporation, the names of the perſons ſo elected to ſerve " in the ſaid ſeveral offices, ſhall be by the ſaid Corporation within " ten days after ſuch election, preſented to the Lord Lieutenant, " or other chief Governor or Governors, and the Privy Council " of this kingdom, to be approved of by them; and that no perſons " ſo elected for any the ſaid offices, ſhall be for ever hereafter " capable of ſerving in the ſaid ſeveral offices or any of them, until " they ſhall be reſpectively approved of by the Lord Lieutenant, or " other chief Governor or Governors of this kingdom, by order, " under their hands: and in caſe the perſons, or any of them, " whoſe names ſhall be ſo preſented to the Lord Lieutenant or chief " Governor or Governors of this kingdom, ſhall not be ſo approved " within ten days after their names ſhall be ſo preſented, then, and " and in ſuch caſe the ſaid Corporation ſhall, from time to time, " proceed to a new election of fit perſons for the ſaid reſpective " offices, for which the perſons ſo preſented ſhall not be ſo approved " of, and ſhall, in like manner, preſent their names to the ſaid " Lord Lieutenant, or other Chief Governor or Governors and " Privy Council of this kingdom, until they ſhall have choſen

" ſuch

" ſuch perſons for the ſaid reſpective offices as ſhall be ſo approved " of, as aforeſaid, &c.

From the time of making theſe rules down to the year 1759, the Corporation of the city of Dublin acted under them, and during that period, it never entered into the head of any man to ſuppoſe, that the power veſted in the Lord Lieutenant and Council, was meant to *interfere*, with, much leſs to *ſupercede* the right of election veſted in the Aldermen. It was conſidered merely as a controul upon thoſe who had the right of election, in order to prevent any perſon to whom a juſt cauſe of objection lay, whom they might elect, from ſerving the office. And accordingly in the year 1711, when a different uſe was made of this power, by the then Lords Juſtices and Privy Council, a complaint was preferred to the Houſe of Commons, and a reſolution was paſſed, and laid before the Queen, " That the diſapprobation by the Lord Lieutenant and " Council of perſons elected Lord Mayors and Sheriffs of the " city of Dublin, who were of known affection to her Majeſty's " perſon and Government, was arbitrary and illegal." In the year 1759, the act paſſed, which has given birth to the preſent conteſt in the city; and the act has certainly very much altered the conſtitution of the Corporation, as eſtabliſhed by charters, and by the new rules. It has in expreſs terms altered the mode of election of the Commons of the Common Council, of Sheriffs, and of Aldermen.—In the election of Sheriffs, the Commons *nominate* eight, the Aldermen *elect* two. In the election of an Alderman, the Alderman *nominate* four, and the Commons *elect* one. The act ſtrikingly contraſts the right of *nomination* with the right of *election*, and in every inſtance, where a bare power of nomination is given, it is given in expreſs terms: So when the right of *election* is given, it is given alſo in expreſs terms; and when it is altered from the right eſtabliſhed by the new rules, it is altered in expreſs terms. The clauſe which relates to the preſent controverſy, takes up the conſideration of the Lord Mayor, *after he ſhall be elected* by the Lord Mayor and Aldermen to ſerve in the office of Lord Mayor of the city; and after *he has been elected, then*, and not *before*, his name *is* to be ſent down to the Commons for their approbation. The words of the clauſe are, " And be it enacted, that the name of any perſon " who ſhall hereafter be elected by the Lord Mayor and Alder- " men of the ſaid city, or the uſual quorum of them, to ſerve " in the office or place, of Lord Mayor of the ſaid city ſhall " be returned by them to the Commons of the Common Council " of the ſaid city for their approbation, without which appro- " bation, ſuch perſon ſhall not be capable of ſerving, in the " office or place of Lord Mayor; and if it ſhall happen, that " the ſaid Commons ſhall reject or diſapprove of the perſon ſo " returned to them, the Lord Mayor and Aldermen of the ſaid " city, or the uſual quorum of them ſhall, from time to time, " return the name of the perſon ſo by them elected, to the

" Commons

" Commons of the Common Council of the ſaid city, for their " approbation, and ſo from time to time, until the ſaid Commons " ſhall approve of the perſons returned by the Lord Mayor and Al- " dermen of the ſaid city, or the uſual quorum of them, provided, " always, that ſuch election into the ſaid office of Lord Mayor, " ſhall be of ſome perſon from among the Aldermen, and that " the ſaid Commons ſhall approve of ſome one perſon ſo elected " and returned to them for their approbation."

The act then provides, that the approbation of the Lord Lieutenant and Council, of the principal Corporate Officers of the city, as eſtabliſhed by the new rules, ſhall not be diſpenſed with; and that the Conſtitution of the Corporation ſhall remain and continue the *ſame* in all reſpects, ſave only in the particulars changed, altered, or provided for by the act.

On the day appointed for electing a Lord Mayor for the enſuing year, the Aldermen elected Alderman James, and the Commons, on his name being ſent down to them, refuſed to give their approbation of him. Purſuant to the ſtatute of 33d of Geo. II. The Aldermen on that day elected eight others of their body ſucceſſively, and the Commons ſucceſſively diſapproved of them all: On the next day both bodies met, and each elected an Alderman to be Lord Mayor for the enſuing year, each body charging the other with the default deſcribed by the ſtatute, and upon that ground reſpectively claimed the excluſive right of election. Each body returned the perſon elected to the Lord Lieutenant and Council for their approbation, and petitioned to be heard by their Council, to ſtate and to argue the legal conſtruction of the ſtatute, under the authority of which they profeſſed to have held their different elections. It was acknowledged that there was not any legal cauſe of objection to the perſon elected by the Lord Mayor and Aldermen; and on their part it was contended, that under the authority of the new rules, confirming the right which they derived from their Charters, that the right of election was reſerved exclufively to the Lord Mayor and Aldermen; that the new rules directed expreſsly, " that no perſon, ſave the Lord Mayor and Aldermen, ſhould vote at the election of a Lord Mayor;" that the ſtatute of the 33d of Geo. II. did not in any manner change the right of election, as eſtabliſhed by the new rules, and therefore that (as the right of election is now eſtabliſhed) no perſon can vote at the election of a Lord Mayor, ſave the ſaid Lord Mayor and Aldermen; that by the known principles of the common law, a mere power of diſapprobation was perfectly conſiſtent with the right of election; that it could controul it only ſo far, as to prevent the perſon elected from ſerving, if any reaſonable perſonal objection lay to him; and therefore, if no ſuch objection lay to the perſon elected by the Aldermen, the Commons could not legally withhold their approbation; and that having withheld it without cauſe, they were guilty of a default in one of the duties preſcribed by the ſtatute. It was contended alſo, that the Commons

had

had failed in another duty prescribed by the act, in the manner in which the ballot for determining the approbation of Alderman James was conducted. On the part of Commons it was contended, that the power of disapprobation given to them by the statute, was arbitrary; that the different provisoes in the clause under which they derived it, necessarily gave them such a power; that the clause, directing, "that their approbation should be given by ballot," of of necessity made it arbitrary; that they had therefore the sole and exclusive right of election, which could not be controuled by any general principle of the common law, or by any known rule of construing statutes. To this it was answered, that the act had reserved the right of ELECTION to the Aldermen; that the power of disapprobation was given to the Commons by way of controul only, to guard against the election of a person not fit to serve the office; and that this being a power given to a *select* body of the Corporation, they were necessarily responsible to the Court of King's Bench for the due exercise of it; that when the act meant to alter the right of election, it had done so in *express* terms; that the right claimed by the Commons, would convert the right of *election* remaining with the Aldermen, into a bare power of *nomination*; and that where the act had intended to give a bare power of *nomination*, it had done so in *express* terms, as in the election of Aldermen and Sheriffs; that by the known rules of construing statutes, where different parts of the same act, or where different acts on the same subject appeared to millitate with each other, it was the duty of those who were to expound them, if possible to reconcile them with each other: and that the different parts of the statute, 33d Geo. II. could not be reconciled with each other, or with such parts of the new rules as as were not altered or repealed by it, unless the construction contended for, by the Lord Mayor and Aldermen, was adopted:—The Lord Lieutenant and Council twice forbore to approve of either of the persons returned to them, in order to give the contending parties an opportunity of meeting each other, and of agreeing upon a fit person to serve the office.

This, however, proved to be a vain expectation. The contending parties persisted in their first determination, and on the last day, when they appeared by their Counsel before the Lord Lieutenant and Privy Council, they avowed their determination not to recede from their claims, and to put them into a course of trial. To enable them so to do, it was acknowledged, that the approbation of the Lord Lieutenant and Council of one or other of the persons returned to them, as elected to serve the office of Lord Mayor, was indispensably necessary; and that without such approbation, neither party could in any way resort to the proper Judicature in order to have their respective rights under the statute 33d Geo. II. ascertained: And on the same day a further objection occurred to the election of Alderman Howison, that it had not been made by ballot as directed by the statute: and on inspecting the book of the Common

Council, the objection appeared to be well founded, The entry in the book is in theſe words, " Moved to reſolve, that Alderman Howiſon is a fit and proper perſon to ſerve the office of Lord Mayor; read, and with one negative allowed: The queſtion being put, reſolved, " that we now proceed to elect by ballot the ſaid Alderman Howiſon." The Lord Lieutenant and Council accordingly approved of Alderman James as a fit and proper perſon to ſerve the office of Lord Mayor for the enſuing year. By this approbation the Lord Lieutenant and Council have only determined, that Alderman James is a man to *whom perſonally no juſt cauſe of objection lies for ſerving that office*. They have not, nor can they decide upon the *merits* of his election. This is a queſtion, which can be diſcuſſed and ſettled only in the Court of King's Bench, and ultimately in the Houſe of Lords. If, indeed, the Lord Lieutenant and Council had obſtinately withheld their approbation of one or other of the perſons elected, they would *then* have aſſumed and exerciſed a power of diſpenſing with the law; for they would have put an inſurmountable obſtacle in the way of both parties to the diſcuſſion and deciſion of their reſpective claims, by the only judication competent to diſcuſs and decide them. The approbation of the Lord Lieutenant and Council does not put Alderman James into poſſeſſion of the office of Lord Mayor. The Charter granted to the city of Dublin by King Henry V. directs, that the Lord Mayor ſhall be ſworn in before one of his Majeſty's Judges, or one of the Barons of the Exchequer, if any of them be then in the city of Dublin; and unleſs the Judge, whoſe duty it is to ſwear in the Lord Mayor of Dublin, ſhall adminiſter the oath of office to Alderman James, he cannot act as Lord Mayor. If the Judge ſhall refuſe to adminiſter this oath to him, the right of election may be determined by an application on the part of Alderman James to the Court of King's Bench for a *mandamus* to admit him. If the Judge ſhall think fit to admit him, then he muſt act as Lord Mayor, and the right of election may be aſcertained by applying for an information in *quo warranto* againſt Alderman James for uſurping the office.

This is a plain ſtatement of facts which cannot be controverted:—and if there is any doubt upon the conſtruction of the ſtatute, and that there is ſuch a doubt, the wiſeſt profeſſional men agree; if, alſo, there is any doubt in point of fact, whether the mode in which the ballot for determining the approbation of Alderman James, as conducted by the Commons, was conformable to the proviſions of the ſame ſtatute, it remains only for the people of Ireland to determine, whether theſe doubts will be beſt reſolved by the Judges of the land, and by a Jury impanelled to try the fact, in the ordinary courſe of juſtice, or by the Commons of the Common Council of the City of Dublin, an Aggregate Meeting at the Royal Exchange, and the Whig Club, duly aſſembled to dine at the King's Arms in Fownes's-ſtreet.

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